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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)
)
Plaintiff,) Case No. CR 10-288
) Milwaukee, Wisconsin
vs.)
) December 7, 2011
JAMES A. STUART, JR.,) 8:30 p.m.
) VOLUME 3 of 3
Defendant.)

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE CHARLES N. CLEVERT, JR.
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

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Proceedings recorded by computerized stenography, transcript
produced by computer aided transcription.

1 P R O C E E D I N G S (8:46 a.m.)

2 THE COURT: Good morning. Last night I handed you
3 instructions and I'm wondering whether or not you had a chance
4 to look at them.

08:47 5 MR. JACOBS: I have.

6 THE COURT: Defense counsel is not here.

7 MR. TOLLEFSON: Your Honor, he just went to blow his
8 nose. He'll be right back.

9 THE COURT: All right. We'll wait a couple moments.

08:48 10 (Mr. Bernhoft enters the courtroom after a brief
11 pause.)

12 INSTRUCTION CONFERENCE

13 THE COURT: The Court has handed you instructions that
14 are proposed in this case. Have you had a chance to look at
08:48 15 them?

16 MR. BERNHOFT: I have, Your Honor.

17 THE COURT: Are there any issues respecting the
18 instructions as tendered?

19 MR. BERNHOFT: I have several issues, Your Honor.

08:48 20 THE COURT: All right.

21 MR. BERNHOFT: First I think "prior inconsistent
22 statement - defendant" should be removed, with Mr. Stuart not
23 testifying.

24 THE COURT: Absolutely.

08:48 25 MR. BERNHOFT: And then I am concerned about the 4.03

1 unanimity. I'm just turning to that now. I mentioned this to
2 Mr. Jacobs the other day. The unanimity on specific acts
3 instruction. I object to the examples in there.

4 I mean, I think it's analogous to sort of a defense
08:49 5 theory of instruction where, as the cases say, the court sort
6 of, quote-unquote, "mouths the theory of the prosecution."

7 I think the first paragraph is crystal clear as to
8 what the jury's obligation is to find unanimity on at least one
9 of the specific acts, and I object to those examples. I don't
08:49 10 like them, I think it muddies the water. To me it's confusing.
11 I like that first paragraph, it's crystal clear.

12 THE COURT: Mr. Jacobs?

13 MR. JACOBS: Judge, my submission which included those
14 examples was based on the guidance from the Seventh Circuit's
08:50 15 Pattern Jury Instructions. While the first paragraph may be
16 clear to lawyers, at least the committee suggests giving
17 examples so that the jury understands what that means. So I
18 believe -- I think it's accurate and a good way to explain the
19 concept of unanimity to the jury.

08:50 20 THE COURT: I'll look at it with the defense concern
21 in mind.

22 MR. BERNHOFT: Thank you, Your Honor.

23 And one last issue, again, assuming when the
24 government rests its case in chief and the Court does a
08:50 25 confirming voir dire of Mr. Stuart respecting his right to

1 testify, we would request Pattern Instruction 3.01, Defendant
2 Does Not Testify.

3 THE COURT: Mr. Jacobs?

4 MR. JACOBS: I think that's correct, Your Honor.

08:51 5 THE COURT: It will be added.

6 MR. BERNHOFT: Thank you, Judge. That's all I have.

7 THE COURT: Mr. Jacobs?

8 MR. JACOBS: Judge, I don't have any further comments
9 on the jury instructions.

08:51 10 THE COURT: Very well. Are you otherwise ready to
11 proceed?

12 MR. JACOBS: Yes.

13 MR. BERNHOFT: Yes.

14 THE COURT: Bring out the jury, please.

08:52 15 (Jury in at 8:52 a.m.)

16 THE COURT: Good morning. Please be seated.

17 You may continue.

18 (Brief pause.)

19 THE COURT: You may proceed.

08:54 20 MR. JACOBS: Thank you.

21 Your Honor, I believe when I left off I had
22 Exhibit 41 -- I think that's where I left off. And I wonder if
23 I could display that to the jury.

24 MATTHEW RECH III, GOVERNMENT WITNESS, PREVIOUSLY SWORN

25 CONT'D DIRECT EXAMINATION

1 BY MR. JACOBS:

2 Q. Special Agent Rech, I don't recall specifically where I left
3 off yesterday with Exhibit 41, so would you remind us all what
4 is Exhibit 41?

08:55 5 A. Excuse me, sir, I think it might have been Exhibit 44.

6 Q. 44?

7 A. Possibly?

8 Q. Sorry. I'll go to 44. Do you have Exhibit 44 with you
9 there?

08:55 10 A. I do, sir.

11 Q. Okay. Would you tell the jury, what is Exhibit 44?

12 A. Exhibit 44 is a Notice and Demand from James A. Stuart, Jr.,
13 in parentheses, "Trust," 2410 Hirschman Lane, Hartland,
14 Wisconsin, 53029. And it's addressed to the Internal Revenue
08:56 15 Service, Department of the Treasury, regarding a W-2 for the tax
16 year 2005, income for tax year 2005. And it begins "To Whom It
17 May Concern."

18 Q. What is the date of that document?

19 A. On page 9 it's signed and dated July 11, 2007.

08:56 20 Q. I'd like to -- I think we had read the bottom of page 1,
21 beginning on paragraph 2. I'd like to then turn to page 2. And
22 if you could read -- again, this may be repetitive, but to put
23 it in some context, would you read the paragraphs 3 through 11.

24 A. Paragraph 3.

08:57 25 "The taxpayer is James A. Stuart, Jr.," in parentheses

1 "trust," "which is also the entity in possession of a Social
2 Security number," in parentheses, "hereinafter SSN."

3 "Number 4. Said trust engages in employment for
4 compensation for personal services actually rendered.

08:57 5 "5. Said trust has an employment relationship with
6 New Age Chemical, Ltd.," in parentheses, "previously New Age
7 Chemical, Inc.," in parentheses, "hereinafter SSNI, in
8 Wisconsin."

9 "6. Said trust is an indentured trust, created by the
08:58 10 Social Security Administration," in parentheses, "hereinafter
11 SSA," also in parentheses, "See: Attached SSA indenture."

12 "7. The James A. Stuart Jr. Trust performs its
13 actions through its trustee.

14 "8. The person serving said Trustee's cognitive
08:58 15 capacity is a Kingdom of Israel based stewardship," parentheses,
16 "see: Attached affidavit."

17 "9. Said stewardship is also a corporation sole by
18 nature.

19 "10. Said stewardship is bound under the law of
08:58 20 consecration by a prior covenant with God," in parentheses, "the
21 King of Kings.

22 "11. The law of consecration requires recognition
23 that by His creation of this earth and everything on it, God,"
24 in parentheses, "the Creator," owns everything."

08:59 25 Q. Okay. And if we continue to the third page of this

1 document, if you could read paragraph 22.

2 A. "22. SSA created a Social Security account number,"
3 parentheses, "SSN," "which may serve as a taxpayer
4 identification number," parentheses, "hereinafter TIN," "so that
08:59 5 together they uniquely identify said Trust from any other person
6 that may have a similar name," parentheses, "like the man," end
7 parentheses; "thus eliminating the possibility of confusing the
8 man with the Trust; though the Trust's name has some
9 similarities to the man's name, one can never confuse the Trust
08:59 10 with the man when the Trust's name is accompanied by its SSN.

11 "The SSN also cannot be misconstrued as if it were,"
12 in quotations, "the man's number," end quotations, "because
13 God's law requires that his covenant children cannot be
14 numbered."

09:00 15 Q. Thank you. Now next I'd like to show you what's been marked
16 for identification as Exhibit 175.

17 Special Agent Rech, do you recognize what Exhibit 175
18 is?

19 A. Yes, I do.

09:01 20 MR. JACOBS: Your Honor, I'd like to read into the
21 record a portion of the stipulation reached by the parties.

22 THE COURT: Proceed.

23 TRIAL STIPULATION NO. 13

24 MR. JACOBS: Paragraph 13 of the stipulation provides
09:01 25 that:

1 "If a representative of the Wisconsin Department of
2 Motor Vehicles were called to testify, he or she would testify
3 that the following exhibits are official records maintained by
4 the DMV in the ordinary course of its operation. The
09:01 5 representative of the DMV would further testify that these
6 records were contemporaneously generated by persons with
7 knowledge of the information reflected in the records and/or
8 received by the DMV in the regular course of its business
9 activity and created and/or received by the DMV as a regular
09:01 10 practice as part of the DMV's regularly conducted activity. The
11 parties further stipulate and agree that these exhibits can be
12 admitted at the trial in this case."

13 And in this regard, Your Honor, Exhibit 175, which is
14 identified as the driver's license renewal application for James
09:02 15 A. Stuart Jr., dated September 6, 2006. I would move
16 Exhibit 175 into evidence.

17 THE COURT: It's received.

18 (Exhibit 175 offered and received.)

19 BY MR. JACOBS:

09:02 20 Q. And Special Agent Rech, if I can draw your attention to the
21 second page of Exhibit 175, can you tell the jury what is that?

22 A. It's a State of Wisconsin Driver's License Renewal
23 Application.

24 Q. And who is it for?

09:02 25 A. James A. Stuart, Jr., 2410 Hirschman Lane, Hartland,

1 Wisconsin, 53029.

2 Q. And is it dated?

3 A. Yes, sir.

4 Q. And what's the date on that?

09:02 5 A. September 12th, 2006.

6 Q. And does it reflect that there is a Social Security number
7 provided by Mr. Stuart when applying for his driver's license?

8 A. Yes, it does.

9 Q. Now, I note on the copy I've displayed here there's a black
09:03 10 box; is that how the original document looks?

11 A. (No response.)

12 Q. Up near Social Security number. I'm sorry.

13 A. No, sir.

14 Q. That's just been redacted for purpose of trial?

09:03 15 A. Correct.

16 Q. And am I correct that instead there is the full handwritten
17 Social Security number for Mr. Stuart reflected on his driver's
18 license application?

19 A. Yes.

09:03 20 Q. Next, Special Agent Rech --

21 I'm sorry, Judge, next I'd like to read into the
22 record another portion of the stipulation entered into by the
23 parties. That is --

24 I actually have three separate paragraphs I'd like to
09:04 25 read into and introduce records associated with that

1 stipulation.

2 THE COURT: Proceed accordingly.

3 TRIAL STIPULATION NO. 9

4 MR. JACOBS: Paragraph 9 of the stipulation provides
09:04 5 that:

6 "If a representative of the Wisconsin Department of
7 Revenue were called to testify, he or she would testify that the
8 following exhibits are true and accurate copies of the Wisconsin
9 Income Tax Returns, each of which is accompanied by a copy of
09:04 10 the U.S. Income Tax Return, received by the Wisconsin Department
11 of Revenue for James A. Stuart, Jr., for the indicated years."

12 Exhibit 92 is the 2001 (sic) Wisconsin 1, Form 1,
13 Income Tax Return in the name of James A. Stuart, Jr. and
14 Marjorie Stuart.

09:04 15 Exhibit 93 is the 2004 Wisconsin 1 Income Tax Return
16 in the names of James A. Stuart, Jr. and Marjorie Stuart.

17 Exhibit 94 is the 2005 Wisconsin 1 Income Tax Return
18 in the name of James A. Stuart, Jr.

19 Exhibit 95 is the Notice of Amount Due issued to James
09:05 20 A. Stuart on the assessment of additional tax for 2005 dated
21 July 10, 2006.

22 And, Your Honor, I would move into evidence
23 Exhibits 92, 93, 94 and 95.

24 THE COURT: Is there any objection?

09:05 25 MR. BERNHOFT: None, Your Honor.

1 THE COURT: They're received.

2 (Exhibits 92-95 offered and received.)

3 TRIAL STIPULATION NO. 10

4 MR. JACOBS: And then paragraph 10 indicates that:

09:05 5 "The representative of the Department of Revenue would
6 further testify that the following exhibits are true and
7 accurate copies of the described documents issued or received by
8 the Department of Revenue on or about the indicated date. The
9 parties further stipulate and agree that these exhibits can be
09:05 10 admitted at the trial in this case."

11 That is, Exhibit 96, a Department of Revenue notice of
12 the amount due issued to James A. Stuart, Jr. on the assessment
13 of additional tax for 2005 dated July 10, 2006.

14 Exhibit 97, Stuart letter appealing Department of
09:05 15 Revenue notice of amount due dated July 13, 2006.

16 Exhibit 98, Department of Revenue Notice of Action on
17 Petition for Redetermination filed by Stuart dated October 30,
18 2006.

19 And I would move into evidence Exhibits 96, 97, and
09:06 20 98.

21 MR. BERNHOFT: No objection, Your Honor.

22 THE COURT: Received.

23 (Exhibits 96-98 offered and received.)

24 TRIAL STIPULATION NO. 11

09:06 25 MR. JACOBS: Paragraph 11 provides:

1 "If a representative of the Wisconsin Tax Appeals
2 Commission were called to testify, he or she would testify that
3 the following exhibits are true and accurate copies of the
4 described pleadings or other submissions to the Commission in
09:06 5 connection with the *James A. Stuart, Jr. vs. Wisconsin*
6 *Department of Revenue*, Docket No. 06-I-282. The parties further
7 stipulate and agree that these exhibits can be admitted at the
8 trial in this case."

9 Those are Exhibits 99, Stuart motion for Determination
09:06 10 of Status, dated December 11, 2006, with cover letter.

11 Exhibit 100, Stuart submission to Tax Appeals
12 Commission, treated as amended Petition for Redetermination,
13 dated February 9, 2007.

14 Exhibit 101, Department of Revenue Answer to Amended
09:07 15 Petition For Redetermination, dated February 27, 2007.

16 Exhibit 102, Department of Revenue Notice of Motion
17 and Motion for Summary Judgment with cover letter, supporting
18 affidavit, and exhibits, dated March 5, 2007.

19 Exhibit 103, Department of Revenue Brief in Support
09:07 20 Motion for Summary Judgment, dated March 5, 2007.

21 Exhibit 104, Tax Appeals Commission Briefing Order,
22 dated March 13, 2007.

23 Exhibit 105, Stuart response with cover letter,
24 attachments, memorandum of law, and exhibits, dated March 20,
09:07 25 2007.

1 And Exhibit 106, the Department of Revenue Reply
2 Brief, dated April 2, 2007.

3 Exhibit 107, Stuart Reply to Department of Revenue
4 Reply with cover letter, dated April 26, 2007.

09:07 5 And Exhibit 108, Wisconsin Tax Commission Ruling and
6 Order in *Stuart vs. Wisconsin Department of Revenue*,
7 Docket No. 61-I-682, dated June 7, 2007.

8 And, Your Honor, with that I would move into evidence
9 Exhibits 99 through 108.

09:08 10 MR. BERNHOFT: No objection, Your Honor.

11 THE COURT: Received.

12 (Exhibits 99-108 offered and received.)

13 BY MR. JACOBS:

14 Q. Special Agent Rech, I'm handing you what's been marked for
09:08 15 identification as Exhibit 108, the last of those documents I
16 moved into evidence. Can you take a look at that document.

17 (Witness peruses document.)

18 A. All right.

19 BY MR. JACOBS:

09:09 20 Q. Do you recognize what that is?

21 A. Yes.

22 Q. What is it?

23 A. It's a State of Wisconsin Tax Appeals Commission, with James
24 A. Stuart, Jr. being the petitioner, versus Wisconsin Department
09:09 25 of Revenue being the respondent, and it's entitled "A Ruling and

1 Order."

2 Q. I'd like to turn your attention to the third page of that
3 document, paragraph 2.

4 A. Is that third page including the cover page?

09:10 5 Q. Yes. It's the second page of the decision; am I right?

6 A. Correct.

7 Q. Okay, could you read paragraph 2?

8 A. "Under date of July 13th, 2006, petitioner filed with the
9 Department an objection to the assessment, which the Department
09:10 10 treated as a timely petition for redetermination. In his
11 objection, petitioner asserted that his 2005 wages did not
12 constitute," in quotation, 'wages,' end quotation, "reportable
13 as income for federal or Wisconsin income tax purposes."

14 Q. And in this document who is the petitioner that they're
09:10 15 referring to?

16 A. The petitioner is James A. Stuart, Jr.

17 Q. And if you would turn to the third page of the decision,
18 paragraphs 14 and 15. Can you read those paragraphs to the
19 jury?

09:11 20 A. Yes.

21 "14. Petitioner filed a Wisconsin Individual Income
22 Tax Return for the year at issue as a full-year Wisconsin
23 resident. On that return, petitioner reported his federal
24 adjusted gross income as totaling \$631.00 which included no wage
09:11 25 income. Robertson affidavit, EX4.

1 "15. Attached to petitioner's 2005 Wisconsin Income
2 Tax Return were a 2005 IRS Form 4852, Substitute Form W-2 and a
3 corrected 2005 IRS Form 1099-MISC," miscellaneous, "apparently
4 prepared by petitioner, that reported zero income paid to him by
09:12 5 New Age Chemical for that year." In parentheses, "Robertson
6 affidavit, EX4," end parentheses."

7 Q. And if you could turn to the sixth page of the decision and
8 read the bottom paragraph.

9 A. "In his petition and subsequent filings, petitioner relies
09:12 10 on a litany of tired tax protestor legal arguments, apparently
11 to delay or avoid paying state income taxes for the year at
12 issue. These arguments and ones like them have been
13 consistently rejected in prior cases before the Commission and
14 the courts. They are groundless and frivolous, and have never
09:13 15 prevailed in Wisconsin, nor, as far as the Commission is aware,
16 in any court in the country.

17 "See *Tracy v. Department of Revenue*, 133 Wis.2d 151,"
18 in parentheses, "CT APP 1986," end parentheses, "COV Department
19 of Revenue, WTAC Docket No. 05-I-79," in parentheses, "December
09:13 20 12th, 2005," end parentheses."

21 Q. And then finally if you turn to the last page, or page 7, I
22 should say, and if you could read the first full paragraph on
23 that.

24 A. "There is no genuine issue of material fact in this case,
09:14 25 and the Department is entitled to summary judgment as a matter

1 of law. In addition, in light of the well-established authority
2 cited above, petitioner's claims are groundless, frivolous, and
3 a waste of state resources. Petitioner is therefore subject to
4 an additional assessment in the amount of \$300.00 pursuant to
09:14 5 Wisconsin Statute, Section 73.01(4) (am)."

6 Q. Do you have the last page? I think it's the last page of
7 that document.

8 A. Yes.

9 Q. What does that indicate?

09:14 10 A. The last page has the title of Wisconsin Tax Appeals
11 Commission, 5005 University Avenue, Suite 110, Madison,
12 Wisconsin, 53705. And it's entitled "Notice of Appeal
13 Information."

14 And underneath that it states "Notice of rights for
09:15 15 rehearing or judicial review, the times allowed for each, and
16 the identification of the party to be named as respondent."

17 MR. JACOBS: And, Your Honor, I'd like to read into
18 the record another paragraph of the stipulation in this case,
19 paragraph 12.

09:15 20 THE COURT: Proceed.

21 TRIAL STIPULATION NO. 12

22 MR. JACOBS: Paragraph 12.

23 "The representative of the Wisconsin Tax Appeals
24 Commission would further testify that the petitioner, James A.
09:15 25 Stuart, Jr., did not file either a petition for rehearing or for

1 judicial review of the decision of the Wisconsin Tax Appeals
2 Commission in *Stuart vs. Wisconsin Department of Revenue*,
3 Docket No. 61-I-682, entered on June 7, 2007."

4 BY MR. JACOBS:

09:15 5 Q. There are a few additional documents I'd like to show you,
6 Special Agent Rech.

7 First, Your Honor, if I could read a portion of the
8 stipulation again into the record in connection with one of
9 these exhibits. This is paragraph 17.

10 TRIAL STIPULATION NO. 17

11 MR. JACOBS: "If a representative of Lake County
12 Publications, Delafield, Wisconsin, were called to testify, he
13 or she would testify that Exhibit 174 is a true and accurate
14 copy of a letter from Jim Stuart that was received by and
09:16 15 published in the opinion section of the December 21st, 2006
16 edition of the Lake County Reporter. The parties further
17 stipulate and agree that this exhibit can be admitted at the
18 trial in this case."

19 And, Your Honor, I would move Exhibit 174 into
09:16 20 evidence.

21 MR. BERNHOFT: No objection.

22 THE COURT: Received.

23 (Exhibit 174 offered and received.)

24 BY MR. JACOBS:

09:16 25 Q. Special Agent Rech, do you have there Exhibit 174?

1 A. Yes, I do.

2 Q. And let me -- I'd like you to -- how many pages is that
3 exhibit?

4 A. Two pages.

09:17 5 Q. And can you read the first part on the first page?

6 A. It's entitled, "Obligation to Pay Income Tax Merely a Myth."

7 "To the editor: Although I certainly sympathize with
8 Mr. Art Schaafsma in his letter expressing his frustration at
9 the taxing mechanism in this country, his frustration is not
09:17 10 productive unless he, and all of us, are willing to stop burying
11 our noses," in quotation, 'Desperate Housewives,' end quotation,
12 "and other entertaining past-times and start paying attention to
13 the workings of government.

14 "The fact is, most of us do not even owe the income
09:18 15 tax, but if you do not know the law, you will think you do. Our
16 Constitution affords many lawful means of taxation, however, the
17 unapportioned direct income tax is not one of them. It all
18 comes down to jurisdiction, and in this case, the jurisdiction
19 of the federal government within the states and over its
09:18 20 sovereign citizens.

21 "To simplify it further, the federal government only
22 has jurisdiction in federal areas and not in areas owned by the
23 sovereign states. A federal zone is: Washington, D.C., Guam,
24 Puerto Rico, military bases, et cetera. People deriving money
09:18 25 from a federal source are considered privileged and subject to

1 the income tax, as well. But, those who do not derive their
2 earnings from a federal source, and work for a for-profit
3 company, are most certainly not subject to this insidious tax.
4 The same goes for the state income tax.

09:19 5 "In Article I, Section 10, of the Constitution of the
6 United States of America, it clearly says that a state cannot
7 demand payment of debt in anything other than gold or silver
8 which our federal government conveniently confiscated in the
9 1930s leaving us with fiat notes worth nothing.

09:19 10 "Now, knowing that, the knowledgeable sovereign
11 citizen, instead of complaining and paying up, should be asking
12 the State of Wisconsin," quotations, 'How can I pay you this tax
13 when there is no gold or silver to the pay you with?'" End
14 quotations. "This would force the states to then go to the
09:19 15 federal government and demand the restoration of gold and
16 silver.

17 "Then we would look at no more inflation, more
18 responsible methods of raising revenue, and overall prosperity.
19 The reason we don't know these simple truths can be traced back
09:20 20 to our state-run school systems, where absolutely no emphasis is
21 placed on civics or the Constitution.

22 "The fact that most do not owe the income tax is a
23 truth, but if no objection is raised, then in the eyes of the
24 government, there is no objection, and we can continue to
09:20 25 voluntarily pay a tax we do not owe forever. If you want to

1 know the truth you must seek it out for yourself.

2 "Don't ask your accountant or a lawyer, because they
3 derive their lucrative incomes at your expense.

4 "Jim Stuart, Delafield."

09:21

5 BY MR. JACOBS:

6 Q. Next, Special Agent Rech, I want to hand you what have been
7 marked for identification as Exhibits 147, 148, and 149.

8 (Witness peruses documents.)

9 A. Okay.

09:22

10 BY MR. JACOBS:

11 Q. Do you recognize what each of those exhibits is?

12 A. I do.

13 Q. Okay. And is each of those -- has each of those been
14 certified by the Secretary of Treasury as being an authentic
15 record of the absence of records?

09:22

16 A. Yes.

17 Q. For example, what is 147?

18 A. 147 is entitled a "Certification of Lack of Record for the
19 Taxpayer Identification Information," who's listed James A.
20 Stuart, Jr. of 3215 Golf Road, unit 254, Delafield, Wisconsin,
21 53018. And description of information is the U.S. Individual
22 Income Tax Return, Form 1040 for the periods December 31st,
23 2006, December 31st, 2007, December 31st, 2008, December 31st,
24 2009, and December 31st, 2010.

09:23

25 MR. JACOBS: Your Honor, I'd move the IRS Certificate

1 of Lack of Record in Exhibit 147 into evidence.

2 THE COURT: Is there any objection?

3 MR. BERNHOFT: None, Your Honor.

4 THE COURT: Received.

09:23 5 (Exhibit 147 offered and received.)

6 BY MR. JACOBS:

7 Q. And what is 148?

8 A. 148 is a Certification of Lack of Record.

9 Q. For what taxpayer is that?

09:23 10 A. Taxpayer name is New Age Chemical, Incorporated.

11 Q. And for what periods does it certify a lack of record?

12 A. September 30th, 2008, September 30th, 2009, September 30th,
13 2010.

14 Q. Does it indicate what records are not on file with the IRS?

09:24 15 A. Yes.

16 Q. What are those?

17 A. U.S. Corporation Income Tax Return, Form 1120.

18 MR. JACOBS: Your Honor, I'd move that Certificate of
19 Lack of Record for New Age Chemical, Inc. into evidence,
09:24 20 Exhibit 148.

21 MR. BERNHOFT: No objection, Judge.

22 THE COURT: Received.

23 (Exhibit 148 offered and received.)

24 BY MR. JACOBS:

09:24 25 Q. And finally, Exhibit 149, Special Agent Rech, what is that?

1 A. It's a Certificate of Assessments, Payments and Other
2 Specified Matters.

3 Q. For what entity does it pertain to?

09:24

4 A. New Age Chemical, Ltd., James A. Stuart, Jr., general
5 partner.

6 Q. And what records does it indicate that the IRS has no record
7 of?

8 A. The Form 1040 for the U.S. Partnership Return of Income for
9 tax period September 2007.

09:25

10 Q. Is that right, Form 1040?

11 A. I'm sorry, Form 1065.

12 Q. What's a Form 1065?

09:25

13 A. A Form 1065 is an information return that a partnership has
14 to file that lists the earnings of the partnership for the
15 specified year.

16 Q. And according to those records does the IRS have any record
17 of receiving partnership returns for the entity called New Age
18 Chemical, Ltd. for the years 2007 through 2010?

19 (Witness peruses documents.)

09:26

20 A. No record of return for those years.

21 MR. JACOBS: Your Honor, I'd move that Certificate of
22 Lack of Record, Exhibit 149, into evidence.

23 MR. BERNHOFT: No objection, Your Honor.

24 THE COURT: Received.

09:26

25 (Exhibit 149 offered and received.)

1 MR. JACOBS: Your Honor, I'd like to read an
2 additional portion of the stipulation into the record, that is,
3 paragraph 16.

4 TRIAL STIPULATION NO. 16

09:26 5 MR. JACOBS: It provides that: "If a representative
6 of the United States Department of State were called to testify,
7 he or she would testify that the following exhibits are official
8 records maintained by the State Department in the ordinary
9 course of its operation. The representative of the State
09:27 10 Department would further testify that these records were
11 contemporaneously generated by persons with knowledge of the
12 information reflected in the records and/or received by the
13 State Department in the regular course of its business activity
14 and created and/or received by the State Department as a regular
09:27 15 practice as part of its official activity. The parties further
16 stipulate and agree that these exhibits can be admitted at the
17 trial in this case."

18 And those are Exhibits 179 and 180. 179 is the
19 certified copy of passport application for James A. Stuart, Jr.,
09:27 20 and Exhibit 180 is the Certification of Absence of Public
21 Record, of a Certificate of Loss of Nationality for James A.
22 Stuart.

23 And I would move Exhibits 179 and 180 into evidence,
24 Your Honor.

09:27 25 MR. BERNHOFT: No objection, Judge.

1 THE COURT: They're received.

2 (Exhibits 179-180 offered and received.)

3 MR. JACOBS: Your Honor, then I would like to read
4 into the record paragraph 18 of the stipulation which provides:

5 TRIAL STIPULATION NO. 18

6 MR. JACOBS: "If a representative of the Waukesha
7 County Treasurer were called to testify, he or she would testify
8 that the following exhibits are official records maintained by
9 the Waukesha County Treasurer in the ordinary course of its
10 operation. The representative of the Waukesha County Treasurer
11 would further testify that these records were contemporaneously
12 generated by persons with knowledge of the information reflected
13 in the records and/or received by the Waukesha County Treasurer
14 in the regular course of its business activity and created
15 and/or received by the Waukesha County Treasurer as a regular
16 practice as part of the Waukesha County Treasurers's regularly
17 conducted activity. The parties further stipulate and agree
18 that these exhibits can be admitted at trial in this case."

19 And among those documents I would move into evidence
20 would be Exhibits 206, 207, and 208:

21 The 2006 Waukesha County Real Estate Property Tax Bill
22 for the property located at 2410 Hirshman Lane in Hartland,
23 Wisconsin;

24 The 2005 Waukesha County Real Estate Property Tax Bill
25 for that same property;

1 And the 2004 Waukesha County Real Property Tax Bill
2 for that same property.

3 And move Exhibits 206, 207, and 208, Your Honor.

4 MR. BERNHOFT: No objection.

09:29 5 THE COURT: Received.

6 (Exhibits 206-208 offered and received.)

7 BY MR. JACOBS:

8 Q. And Special Agent Rech, I'd like you to just briefly look at
9 Exhibits 206, 207, and 208.

09:30 10 (Witness peruses documents.)

11 BY MR. JACOBS:

12 Q. And are you familiar with those three exhibits?

13 A. Yes.

14 Q. Can you explain to the jury what those reflect?

09:30 15 A. 206 is a tax bill details of the real property tax bill of
16 2410 Hirschman Lane, with two transactions posted in 2007. One
17 transaction tax was paid \$3,272.06, and -- that was on January
18 31st, 2007. There was also a transaction on July 18th of 2007
19 for a payment of \$3,228.54.

09:31 20 Q. And so that reflects that the 2006 property taxes for
21 Mr. Stuart's home was paid in 2007?

22 A. Yes.

23 Q. And then 207, does that reflect that the 2005 real estate
24 taxes for Mr. Stuart's home in Hartland were paid in 2006?

09:31 25 A. Yes.

1 Q. And then finally, Exhibit 208 reflect that the 2004 real
2 estate taxes for Mr. Stuart's home were paid in 2005.

3 A. Yes.

4 MR. JACOBS: Judge, that's all I have for this
5 witness.

09:32

6 CROSS-EXAMINATION

7 BY MR. BERNHOFT:

8 Q. Good morning, Special Agent Rick.

9 A. Good morning, sir.

09:33

10 MR. BERNHOFT: Mr. Jacobs, is it possible for sake of
11 convenience to put up 59? Otherwise I can go up to the Elmo.

12 MR. JACOBS: Is that a letter?

13 MR. BERNHOFT: Yes. It's a notarized document.
14 Thank you very much.

09:33

15 BY MR. BERNHOFT:

16 Q. Special Agent Rick, on the screen there's Exhibit 59 that's
17 been admitted as evidence in the case. Can you take a look at
18 those notary signatures down there about two-thirds of the way
19 down the page?

09:33

20 A. I see it.

21 Q. And can you tell me who notarized this -- first of all, just
22 again for the record can you tell me what that document is?

23 A. I see a "Re notice pursuant to Title 26 U.S.C.,
24 Section 6001, request for due process."

09:34

25 Q. All right. And I believe in the upper left-hand corner this

1 is a document that Mr. Stuart sent to the Secretary of the
2 Treasury in Washington, D.C.; is that correct?

3 A. Yes, sir.

4 Q. Thank you. And who notarized this document for Mr. Stuart?

09:34 5 A. It says Rich Schlipp.

6 Q. Do you know who Richard Schlipp is?

7 A. Yes, sir.

8 Q. And who is Richard Schlipp?

9 A. Husband of Beverly Schlipp.

09:34 10 Q. And Beverly Schlipp is Mr. Stuart's sister and 30 percent
11 owner of New Age?

12 A. Yes, sir.

13 Q. Thank you. Now, Special Agent Rech, on direct you testified
14 briefly about how you came to investigate Jim Stuart; is that
09:35 15 correct?

16 A. Yes, sir.

17 Q. And you had mentioned something about the case being
18 referred to you. Can you describe that in a bit more detail
19 precisely how you came to have the Stuart file for
09:35 20 investigation?

21 A. There's many ways that we as special agents have cases and
22 one of them would be a referral, what is known as the Civil
23 Division of the Internal Revenue Service, as opposed to myself
24 who is a member of the Criminal Investigative Division of the
09:35 25 Internal Revenue Service. The Civil Division is a division that

1 typically handles what most people would describe as audits,
2 personal or individual, and oftentimes they would refer a case
3 for potential criminal investigation to our office.

4 Q. And is that, in fact, the referral mechanism that led you to
09:36 5 have the Stuart file for investigation?

6 A. That's correct.

7 Q. And which division of civil did it come from? Was it SB/SE,
8 Small Business/Self-Employed?

9 A. I believe so, yes.

09:36 10 Q. Special Agent Rech, did you have any interaction with the
11 Frivolous Correspondence Unit, IRS, Ogden, Utah?

12 A. Yes, sir.

13 Q. And could you describe your interactions with the Frivolous
14 Correspondence Unit in Ogden?

09:36 15 A. I placed one phone call to the FRV. I do not know -- I
16 cannot recall the date of that phone call.

17 Q. Could you explain that acronym you just used for the jury's
18 sake?

19 A. The Frivolous Return Center?

09:36 20 Q. Right. Okay. And why did you place that call?

21 A. I saw a document that was stamped with what I believed was a
22 Frivolous Return Center stamp.

23 Q. And so what was your purpose in then calling the FRP (sic)
24 in Ogden, Utah?

09:37 25 A. To see if they had any information regarding this file or

1 any other additional documentation and to direct, if there was,
2 to my attention.

3 Q. And did they have either additional information or
4 additional documents?

09:37 5 A. The documents were continued to send to me from that -- from
6 that division. I don't know if it was a result of that phone
7 call, sir.

8 Q. All right. What other way would they decide to send you
9 documents respecting the Stuart investigation?

09:37 10 A. Upon initiation of this investigation by criminal
11 enforcement I placed what would be called a criminal enforcement
12 position lock on the case according to his name and Social
13 Security identification number. So any correspondence that
14 would be -- that would come to the service center would be sent
09:38 15 to my attention. If it had his identifiable properties on it,
16 it would come to me.

17 Q. Could you describe in a bit more detail precisely -- well,
18 withdraw that.

19 This -- isn't that referred to as placing a 914 freeze
09:38 20 code on Mr. Stuart's file? Is that fair?

21 A. That would be the official code number, correct.

22 Q. Right. And where do you place that freeze code?

23 A. Do you mean what division?

24 Q. No. What are you doing with that freeze code? What are you
09:38 25 looking at when you put that code identifier so everybody else

1 in the IRS knows that you have the case in the Criminal
2 Investigation Division?

3 A. Well, we submit a form and it gets entered in that the
4 freeze code gets identified so that -- I guess as I described --
09:39 5 any information that would come in regarding that taxpayer would
6 be directed to me, in his case. Or that if anybody else looked
7 at the file they would have the ability to know that this case
8 was a current criminal investigation coded file.

9 Q. All right. Thank you.

09:39 10 Your Honor, may I approach the Elmo to query the
11 witness?

12 THE COURT: You may.

13 MR. BERNHOFT: Thank you.

14 BY MR. BERNHOFT:

09:39 15 Q. Special Agent Rech, I'm going to hand you a copy of what's
16 been admitted as Exhibit 44 to refresh your memory about this
17 exhibit. Could you take a look at that, please.

18 A. Sure.

19 Q. Thank you.

09:40 20 (Witness peruses document.)

21 BY MR. BERNHOFT:

22 Q. And what is that document, Special Agent Rech?

23 A. There's several documents.

24 Q. Can you tell me what the face page says? Is it fair to say
09:41 25 that's a letter from Jim Stuart to somebody?

1 A. That's correct, sir.

2 Q. And who is he sending that document to?

3 A. To the Internal Revenue Service, Department of Treasury.

4 Q. Thank you. Could I have that back, please?

09:41 5 A. Sure.

6 Q. Thank you. Special Agent Rech, I'm going to direct your
7 attention to page 5 of this notice and demand from Jim Stuart.
8 And I'm just going to ask you to take a look briefly at -- for
9 context. This is page 5 of Exhibit 44. I'm going to go down
10 and ask you to look at paragraphs 45 and 46.

09:41 11 And Special Agent Rech, could you read paragraph 45 to
12 the jury, please?

13 A. "45. The James A. Stuart, Jr. Trust, through the actions of
14 its Trustee, and after failing to find a competent tax
09:42 15 professional to advise the Trust of any tax liability it might
16 have, has repeatedly asked the IRS for its help in computing
17 said tax liability as the trustee finds the IRC to be
18 incomprehensible and beyond the scope of understanding for a
19 person of average intelligence."

09:42 20 Q. And could you continue on with paragraph 46, Special Agent
21 Rech.

22 A. "46. The Trust has therefore informed the IRS that it
23 wishes to comply with any and all lawful statutes as they may
24 relate to an income tax liability on the part of the Trust."

09:43 25 Q. Thank you, Special Agent.

1 I'm going to refer your attention next, Special Agent
2 Rech, to page 6 of this same letter from Jim Stuart to the IRS.
3 And could you take a look at that, Special Agent, and if you
4 would read, please, paragraph 56 for the jury.

09:43 5 A. "56. As the Trust finds the IRC to be incomprehensible, and
6 is unable to find a tax professional that is qualified, or able
7 to assist, the Trust has repeatedly turned to the IRS, as the
8 collection and enforcement agency for the Department of
9 Treasury, to assist with explanations as to where in the IRC a
09:44 10 tax may be due on the part of the Trust, and if such tax is, in
11 fact, due, which form the Trust is to use to file a return."

12 Q. And could you continue, please, with that short paragraph
13 57?

14 A. Yes. "57. As of the date of this notice and demand, the
09:44 15 IRS has failed to, or refuses to, respond to, or assist the
16 Trust, as the Trust has repeatedly requested it to."

17 Q. And lastly, Special Agent, would you please read paragraph
18 58 for the jury.

19 A. "The James A. Stuart, Jr. Trust alleges that the IRS's
09:44 20 failure, or refusal, to assist the Trust in its determination of
21 any potential income tax liability that may be due, after the
22 Trust has repeatedly requested such assistance, is because of
23 the fact that no income tax liability is due from the Trust,
24 and, therefore, no meaningful and lawful assistance is able to
09:45 25 be given."

1 Q. Thank you, Special Agent.

2 Your Honor, I'm going to go back to the podium,
3 please.

4 THE COURT: Very well. Will you need the laptop?

09:45 5 MR. BERNHOFT: No, sir.

6 BY MR. BERNHOFT:

7 Q. Now, Special Agent Rech, you've testified that you were the
8 lead case agent on the Stuart investigation, correct?

9 A. Yes, sir.

09:45 10 Q. And you had opportunity to examine books and records of New
11 Age Chemical pursuant to items seized during the execution of a
12 search warrant by yourself and other agents of the Internal
13 Revenue Service?

14 A. Yes, sir.

09:45 15 Q. Well, let me back up and ask you a question. Do you, as a
16 Criminal Investigation Division special agent, have authority by
17 which you can summons books, records, computer data from
18 entities and individuals?

19 A. Yes, sir.

09:46 20 Q. And where would that authority come from?

21 A. Authority is coming from the Commissioner, a directive. The
22 Commissioner which delegates it to the other -- I'm not sure the
23 directive number, but it's -- I can read my pocket minder for
24 the entire --

09:46 25 Q. Well, let me see if we can get there with the questions.

1 And not a trick question.

2 26 U.S.C. of the Internal Revenue Code has a section
3 7602, is it fair to say that that section provides summons
4 authority for Internal Revenue Service agents such as yourself?

09:46 5 A. I would like to the look at the section, if I may, to
6 confirm that, but --

7 Q. One moment, please.

8 May I approach the witness, Your Honor?

9 THE COURT: You may.

09:47 10 BY MR. BERNHOFT:

11 Q. It's a big book. I'm getting there. I'm at 7520. Special
12 Agent, if you could take the code there. If you thumb a few
13 pages over you'll be able to find 7602.

14 (Witness peruses document.)

09:47 15 A. Section 7602.

16 BY MR. BERNHOFT:

17 Q. And what's that section titled, Special Agent?

18 A. "Examination of Books and Witnesses," subtitle A, "Authority
19 to Summon," et cetera.

09:48 20 Q. Right. And that would be the authority by which a special
21 agent such as yourself could issue an administrative summons
22 under that section and request books and records and documents
23 and things from a person or an entity; is that correct?

24 A. Yes. It actually lists the secretary and the delegation
09:48 25 powers.

1 Q. Right. And then the secretary delegates that authority
2 downward to certain classes of IRS employees including special
3 agents.

4 A. Yes, sir.

09:48 5 Q. You've testified that there was an execution of a search
6 warrant at the New Age Chemical property. I believe you
7 mentioned that was in February of 2009?

8 A. Yes, sir.

9 Q. Wouldn't it have been possible to obtain all that tax and
09:48 10 financial information through means other than the execution of
11 a search warrant?

12 A. Not in its entirety.

13 Q. What would not have been able to have been obtained by you
14 or your office through other less intrusive means?

09:49 15 A. The actual books and records, the computer -- copied images
16 of the computers.

17 Q. Well, you could have summonsed the corporation's books and
18 records, correct?

19 A. I attempted to.

09:49 20 Q. You did. And when did you attempt to do that?

21 A. In November of 2008.

22 Q. All right. And did you issue such 7602 summonses to New Age
23 Chemical?

24 A. I actually went to Mr. Stuart's residence and attempted
09:49 25 to --

1 THE COURT: Please approach.

2 (At side bar on the record.)

3 THE COURT: I'm curious whether or not there's going
4 to be any indication that he invoked his Fifth privilege.

09:50 5 MR. JACOBS: I don't know that's what he did. I think
6 he's going to describe what he did earlier. But he said that
7 entity wasn't here.

8 THE COURT: Okay.

9 MR. BERNHOFT: I'm sensitive to that. I can back out
09:50 10 of this and move on.

11 THE COURT: All right.

12 (End of discussion at side bar.)

13 BY MR. BERNHOFT:

14 Q. Special Agent, I'm going to turn to a different subject and
09:50 15 I think we're almost done.

16 In the course of your investigation you've testified
17 that you had opportunity to examine a lot of Jim Stuart's
18 business and personal and financial affairs; is that correct?

19 A. Yes, sir.

09:51 20 Q. In your opinion was Mr. Stuart living large?

21 A. It's an objective statement, sir. Could you describe what
22 exactly you mean by "living large"?

23 Q. Sure. Was he a big spender?

24 A. In some respects.

09:51 25 Q. What respects?

1 A. Well, a big spender, if you look at the assets or -- I know
2 he paid off some mortgages, some loans. Bought I believe over
3 \$100,000 in gold.

4 Q. And the gold was for an investment purpose, I assume?

09:51 5 A. I don't know, sir.

6 Q. Any big restaurant bills in your examination of his personal
7 finances?

8 A. I do not recall any.

9 Q. Was he a big clothes horse, lots of fancy clothes?

09:51 10 A. I only saw Mr. Stuart once during the course of the
11 investigation, that was at his door in the morning.

12 Q. Okay. Go ahead. I'm sorry.

13 A. He did have a classic Corvette that I had found, I believe
14 it was a 1950s, I don't know the exact year, but it was a
09:52 15 classic Corvette.

16 Q. Okay.

17 One moment, please, Judge.

18 THE COURT: Certainly.

19 (Brief pause.)

09:52 20 MR. BERNHOFT: That's all I have, Judge.

21 MR. JACOBS: I don't have any redirect, Your Honor.

22 THE COURT: You may step down.

23 THE WITNESS: Thank you, sir.

24 (Witness excused at 9:52 a.m.)

09:52 25 MR. JACOBS: Your Honor, the United States would next

1 call Kathleen Bashaw. Ms. Bashaw, if you would come forward.

2 Let me clean up the witness stand.

3 THE REPORTER: Raise your right hand, please.

4 KATHLEEN BASHAW, GOVERNMENT WITNESS, SWORN

5 THE REPORTER: Please state your name and spell your
6 name for the record.

7 THE WITNESS: Kathleen Bashaw, K-A-T-H-L-E-E-N.

8 Bashaw, B, as in boy, A-S-H-A-W.

9 DIRECT EXAMINATION

09:54 10 BY MR. JACOBS:

11 Q. Want some water or anything?

12 A. I think I'm okay.

13 Q. Ms. Bashaw, can you tell me what city you currently live in?

14 A. Milwaukee.

09:54 15 Q. How long have you lived in Milwaukee?

16 A. Approximately 9 1/2, 10 years.

17 Q. Would you tell me what your educational background is? How
18 far did you go in school?

19 A. I have a bachelor's and I went to school for accounting and
09:54 20 finance.

21 Q. Where did you go to school?

22 A. University of Wisconsin-Eau Claire.

23 Q. And when did you graduate?

24 A. I graduated in 2002.

09:54 25 Q. And are you a Certified Public Accountant?

1 A. I am, yes.

2 Q. When did you receive your CPA?

3 A. In 2008.

4 Q. How are you currently employed?

09:55 5 A. I work Internal Revenue Service.

6 Q. In what capacity do you work for the IRS?

7 A. I'm an internal revenue agent.

8 Q. How long have you had that position?

9 A. Just over nine years.

09:55 10 Q. As part of that job did you receive some training through
11 the IRS?

12 A. Yes.

13 Q. Would you describe to the jury the training you've received
14 through the IRS?

09:55 15 A. Pretty much the first three years of the job we kind of --
16 do kind of steppingstone to understand the big picture of
17 general businesses. So we started out with the basic 1040,
18 understanding the Schedule A, to then going to a Schedule C, to
19 then -- and during this period we would go to training, learn
09:55 20 about those schedules and so forth, and then come back and do
21 on-the-job audits to kind of experience those things. Then we'd
22 go back for further training which then continued to
23 corporations, Form 1120's, and then Form 1120S's and
24 partnerships.

09:56 25 Q. You mentioned that after the training you would do some

1 practical work. Could you describe the type of audits you would
2 perform as part of your job?

3 A. Basically, at this point -- after, you know, going through
4 the training process, my focus is mostly on auditing businesses.
09:56 5 So I go out to the business, make sure everything is reflective
6 to what the tax return shows. And then I look at their books
7 and records and make sure that they are properly going from
8 their in-house accounting to tax accounting so everything is
9 properly reflected on the tax return and I basically just

09:56 10 determine if that was done properly or not.

11 Q. Do you know approximately how many businesses you've audited
12 during your nine-year career with the IRS?

13 A. I would say it kind of varies because it can be all
14 different types of businesses and carry into the shareholders
09:57 15 and partners and so forth, but I would say about 500.

16 Q. Now, Ms. Bashaw, have you sat here through the entire trial
17 in this case?

18 A. Yes.

19 Q. And have you had access to the exhibits that have been
09:57 20 introduced in court here?

21 A. Yes.

22 Q. And were you asked to conduct an analysis after listening to
23 the testimony and reviewing the exhibits?

24 A. Yes.

09:57 25 Q. And could you just describe generally what were you asked to

1 do?

2 A. I was asked to determine what the tax amount would be based
3 on these three years, 2005, 2006, 2007, due and owing for
4 Mr. Stuart.

09:58 5 Q. And did you prepare a chart summarizing your analysis in
6 this matter?

7 A. Yes.

8 Q. Let me give you a copy of what has been marked for
9 identification as Exhibit 210. And is Exhibit 210, does that
09:58 10 reflect the analysis you conducted?

11 A. Yes.

12 Q. And is all of the information in Exhibit 210, does it derive
13 from evidence received during the trial in this matter?

14 A. Yes.

09:58 15 MR. JACOBS: Your Honor, I would move into evidence
16 Exhibit 210.

17 MR. BERNHOFT: No objection, Your Honor.

18 THE COURT: Received.

19 (Exhibit 210 offered and received.)

09:58 20 MR. JACOBS: And if I could be allowed to provide a
21 paper copy to the jury, Judge. It's easier to work. I can work
22 from here then.

23 THE COURT: You may proceed.

24 (Exhibit 210 handed to the jury.)

10:00 25 BY MR. JACOBS:

1 Q. Okay, Ms. Bashaw, why don't we -- perhaps you could just
2 describe generally Exhibit 210. Can you just describe the
3 process that this reflects?

4 A. Sure. I tried to kinda break this down in the way you would
5 see it on the basic Form 1040 that you all would file, in order
6 to make it somewhat hopefully clear for everybody to look at.

7 So pretty much shows the income. And then any
8 deductions that I was able to generally come up with as far as
9 what had flowed through from K-1s, and then to itemized
10 deductions or standard deduction, whichever one was applicable
11 per the particular year.

12 Q. Okay. And then you made a tax calculation?

13 A. Yes. And then I made a tax calculation.

14 Q. Well, why don't we focus on the year 2005, the left-hand
15 side. And could you run down the column for 2005. I gather
16 there are two columns under 2005, and explain what each row
17 under that column -- what that reflects and where that
18 information came from.

19 A. Okay. The wages from New Age Chemical, that comes from
20 that -- in the evidence that was provided during Matt Rech's
21 testimony there was all the payments that were made from New Age
22 Chemical to Mr. Stuart. And that then corresponds to the actual
23 checks that went through and so forth. So that's where that
24 amount came from. But it also was reflected in Beverly
25 Schlipp's testimony that this was meant for compensation, the

1 payments that were made to him. And also, New Age had prepared
2 a W-2 which this also corresponds to.

3 And then we've got taxable interest and ordinary
4 dividends. Those two items actually just came from the 2005 tax
10:02 5 return that had been filed. And -- or shown in evidence as to
6 have been filed. And those were the two items that Mr. Stuart
7 had reported, so included those items.

8 The other income 1099, that again is -- comes from the
9 same things as from what was discussed in the wages above. It
10:02 10 was from that -- again, that schedule that was provided in the
11 evidence that showed payments. And this -- I know there was
12 1099s that had been prepared so I just included that there.

13 And then we've got New Age K-1, capital gain/loss,
14 basically this is -- the K-1 as has been mentioned throughout
10:03 15 the testimonies is -- shows the flow-through amounts from New
16 Age Chemical to the shareholder, his 70 percent share.

17 So the items New Age K-1 for capital gains, ordinary
18 income, Section 179 deduction, these all flowed through from
19 those -- from that K-1. And that had been provided in evidence.

10:03 20 And specifically, like the capital loss, there was a
21 \$14 ,000 loss that flows through the K-1. Well, the capital
22 loss gets then treated through to the individual as if it's
23 theirs and he's entitled to take 1500 as a deduction without
24 having capital gains to offset the full amount.

10:04 25 And then the ordinary income is the -- as shown on the

1 K-1 in evidence, is the flow-through amount that was allocated
2 to him for ordinary income.

3 And then the Section 179 deduction, this is basically
4 an election to expense part of what would be depreciable assets
10:04 5 up front. And so I flowed that through to him.

6 And then we've got another deduction which is domestic
7 production activity deduction, and that also flows through from
8 the K-1. And so this -- oh, I'm sorry, that's not in 2005 and I
9 guess I'm staying focused on 2005. But, anyway.

10:04 10 And then, so we've got the adjusted gross income of
11 230,653.

12 And then we go to the itemized deduction. On the 2005
13 return he had taken a standard deduction, but from evidence that
14 was shown, which included property tax bills and also mortgage
10:05 15 interest paid, I did an analysis on that and the calculation of
16 what his itemized deduction would be, which was greater than the
17 standard deduction, so for that reason I gave the itemized
18 deduction here.

19 So which then -- the personal exemption because of the
10:05 20 level of his income, as a married/filing separate, that's how
21 the 2005 return that was put in evidence shows he had filed, he
22 is -- he's no longer able to take a deduction based on the
23 calculation for the exemption.

24 So we had taxable income of 216,946. And then that
10:06 25 is total tax of 62,870.

1 Then there was some withholding that took place in
2 2005 from that W-2 that had been presented in evidence. And, so
3 that's 18,786, which would then leave 44,084 that has not been
4 paid.

10:06 5 Q. Now, how you get from total tax from taxable income, there
6 are just tax tables in the federal tax law that tell you if you
7 make this amount of income this is the tax applicable to that?

8 A. Yes.

9 Q. So that's just a mechanical calculation?

10:06 10 A. Yes.

11 Q. Now, I think you mentioned something about checks. Am I
12 right that in 2005 all of those payments to him were made by
13 direct deposit?

14 A. Yes. Yes. Yes.

10:07 15 Q. And I think maybe you through a Payroll Data Services or
16 some payroll company?

17 A. Yes.

18 Q. And that's the entity that would have generated the W-2 and
19 the 1099 you're referring to?

10:07 20 A. Yes.

21 Q. Now, did you do that same analysis for 2006 and 2007?

22 A. Yes.

23 Q. Okay. I gather there was some slightly more technical
24 adjustments here. As you mentioned --

10:07 25 A. Yes.

1 Q. Let me just give one moment here.

2 (Brief pause.)

3 MR. JACOBS: Do you want to take a minute, Judge?

4 THE COURT: Yes, take a short recess. We'll return to
10:08 5 the jury room for a couple of moments.

6 THE BAILIFF: All rise.

7 (Jury out at 10:08 a.m.)

8 THE COURT: Counsel? Mr. Bernhoft and Mr. Jacobs, I
9 noticed one juror who has been using a listening device was not
10:09 10 using his listening device a few moments ago.

11 Counsel? You should listen in. No pun intended.

12 I noticed one juror who has some listening -- some
13 hearing problems was not using his infrared listening device. I
14 don't know whether or not he missed anything critical during the
10:10 15 trial. Therefore, what I would like to do is to have that juror
16 come out to answer a few questions as to whether or not he was
17 able to hear sufficiently all of the testimony. If not, we will
18 take steps to see to it that he can hear what was said.

19 THE BAILIFF: He said for the first hour he heard.

10:10 20 MR. JACOBS: So from the beginning of her testimony
21 then?

22 THE COURT: I will ask. Would you agree or disagree?

23 MR. JACOBS: That's fine with me, Judge.

24 MR. BERNHOFT: Agree.

10:10 25 THE COURT: All right. We'll wait till your client

1 comes back and then make the inquiry.

2 (Discussion off the record. Recess then taken at
3 10:10 a.m., until 10:20 a.m.)

4 THE COURT: All right, let's go back on the record.

10:20 5 Be seated, please.

6 As indicated earlier, I will have the juror who has
7 been using the infrared listening device come back to the
8 courtroom alone to answer questions respecting what, if
9 anything, he was unable to hear, and whether or not he would
10 like any portion of the proceedings read to him in the event he
11 was having difficulty hearing some portion of the proceedings
12 because of a malfunction of the listening device.

13 Is that acceptable to the parties?

14 MR. JACOBS: Yes, Your Honor.

10:21 15 MR. BERNHOFT: Yes, Your Honor.

16 THE COURT: Before we do that, I'd like to revisit a
17 matter which arose earlier in the case, and that is a
18 discussion -- actually a request by the defense for materials
19 under 18 U.S.C. Section 3500.

10:21 20 The court notes that when Ms. Morgan from the Internal
21 Revenue Service/Ogden, Utah office completed her testimony the
22 defense requested transcripts of proceedings where she may have
23 given testimony. I believe there was testimony that there were
24 approximately 60-plus times that the witness had testified for
10:22 25 the government.

1 The court concluded after hearing from the parties
2 that the Jencks Act, and 3500 in particular, does not apply to
3 this proceeding and that the government was under no obligation
4 to supply transcripts of testimony given previously by the
10:22 5 witness.

6 Notwithstanding that, I'd like some clarification and
7 further discussion. First, I'd like to ask the defense whether
8 there was any prior request for transcripts of this witness's
9 testimony.

10:23 10 MR. BERNHOFT: No, Your Honor. We were -- we did not
11 know -- initially the government had indicated that the IRS
12 Service Center witness would come from Kansas City, and then
13 apparently there was -- I think Mr. Jacobs can clarify -- a
14 last-minute substitution. So we were not aware of who the
10:23 15 witness was until, I believe, Monday.

16 THE COURT: All right.

17 MR. BERNHOFT: Of this week.

18 THE COURT: Number two, Mr. Jacobs, do you have any
19 transcripts of that witness's prior testimony?

10:23 20 MR. JACOBS: No, Your Honor.

21 THE COURT: Have you been provided with any
22 information as to whether or not the government has transcripts
23 of that witness's prior testimony?

24 MR. JACOBS: I don't know. I've never made inquiry
10:24 25 whether in some other trials there's a transcript because she's

1 testified in another trial and it went up on appeal and a
2 transcript was prepared. So I have no knowledge of that.

3 THE COURT: Do you have any indication that the
4 proceedings where Ms. Morgan testified were sealed proceedings
10:24 5 such as -- well, sealed proceedings where transcripts would not
6 otherwise be available to the public?

7 MR. JACOBS: I have no knowledge of that.

8 THE COURT: All right.

9 In light of what I have just heard I reaffirm my
10:25 10 earlier decision not to require the government to produce
11 transcripts of Ms. Morgan's prior testimony.

12 There are several cases which apply to such matters.
13 One is *United States vs. Baker* at 358 F.2d at page 18. It's a
14 1966 Seventh Circuit decision which included a finding at page
10:25 15 20 as follows:

16 "A transcript of a witness's testimony in a prior
17 trial does not come within the language of the Jencks Act. We
18 doubt that a court reporter falls within the category of an
19 agent of a government. This would be tantamount to construing
10:26 20 the language as meaning government employees. A federal
21 commissioner or indeed a federal judge might be said to be an
22 employee of the government, but it hardly could have been
23 Congress's intent that a judge's shorthand notes or a transcript
24 thereof would have to be produced upon demand.

10:26 25 "But assuming a court reporter in a separate trial

1 does come within the wording of the act, in the instant case
2 there was no request or demand by defendant's counsel for such
3 transcript prior to trial. The government has no obligation to
4 transcribe stenographic notes of testimony in a criminal trial
10:26 5 just in case some of the witnesses might later (sic) called upon
6 to testify in a related trial. Such a practice would create a
7 heavy and in our opinion unnecessary burden.

8 "We hold that under these circumstances of the instant
9 case in the absence of a demand or request for such a transcript
10:27 10 prior to the trial and a showing that a defendant was unable to
11 pay the court reporter for such a transcript, the government had
12 no duty to have such transcripts available. We hold there was
13 no error in this respect."

14 Cert was sought and denied in the Baker case.

10:27 15 Further note is made of decisions by the Fourth
16 Circuit in *United States vs. Anthony Collins*, 52 Fed.Appx 622
17 from the Fourth Circuit, where among other things the court
18 said: "However" -- and this is at page 1.

19 "A transcript was not in the government's possession.
10:28 20 Although the transcript was a matter of public record to which
21 the defense had access, the government is not required to
22 produce transcripts of witnesses who testified previously if the
23 evidence in question is available to the defendant from other
24 sources."

10:28 25 The Ninth -- I'm sorry, the Eighth Circuit ruled in

1 United States of America vs. Edwin Mull, M U L L, which appears
2 at 40 Fed.Appx 300, that's also 2002 WL 337912, and there it
3 said, at page 2:

4 "The Jencks Act protects information in the
5 government's file from being subject to discovery until after a
6 witness has testified. Thus, documents which are matters of
7 public record are not subject to the Jencks Act because they are
8 discoverable even before a witness testifies at a defendant's
9 trial."

10 With that, we can move forward. I'll ask the bailiff
11 to bring out the juror.

12 (Juror No. 7 brought into the courtroom.)

13 THE COURT: Be seated, please. You may be seated.
14 Are you able to hear at this time?

15 JUROR NO. 7: Yes, thank you.

16 THE COURT: At some point during the proceeding this
17 morning I noted that your listening device was not being used.
18 So I'd like to begin by inquiring whether you at any point
19 during today's proceeding were unable to understand testimony
20 that was being given because you were not able to hear?

21 JUROR NO. 7: No, I could hear fine. That's why I
22 didn't say anything. When I took them off I could hear. So I
23 figured at the next break I would just -- but it was fine.

24 THE COURT: Good. That's all we wanted to know.

25 JUROR NO. 7: Thank you. Thank you.

1 THE COURT: All right. Would you bring out the rest
2 of the jury.

3 If it goes out again let me know.

4 JUROR NO. 7: Okay, I will. Thank you very much.

10:32 5 THE BAILIFF: All rise.

6 (Jury in at 10:32 a.m.)

7 THE COURT: You may continue.

8 BY MR. JACOBS:

9 Q. Ms. Bashaw, I was asking you about your analysis for 2006
10 and 2007. I gather there are at least one or more -- slightly
11 more technical adjustments you made in that analysis?

12 A. Yes.

13 Q. And could you by way of example -- you had started to talk
14 about what's reflected on one of the rows as a New Age K-1 DPA
10:33 15 deduction; what is that?

16 A. Domestic production activity. And it's a deduction that's
17 allowable based on the income produced in a company that does
18 domestic manufacturing or any sorts of activities domestically.
19 And so that flows through from the K-1 and basically it's a
10:33 20 calculation from what's provided on the K-1 to then come to the
21 number of \$6,303 in 2007.

22 Q. And that was the only year in which that deduction applied?

23 A. Yes.

24 Q. So am I correct that all of the income information derives
10:34 25 from the records in court, the direct deposit records,

1 Mr. Stuart's bank records receiving those deposits, the checks
2 that were introduced into court, the W-2 and the 1099s
3 introduced in court?

4 A. Yes.

10:34 5 Q. And then the tax calculation is just an application of a
6 mathematical formula to the taxable income number?

7 A. Yes.

8 Q. Okay.

9 That's all I have for this witness, Your Honor.

10:34 10 CROSS-EXAMINATION

11 BY MR. BERNHOFT:

12 Q. Good morning, Ms. Bashaw. I just have one question. What
13 was the tax rate that you applied to achieve the total tax due
14 calculations on Exhibit 210?

10:35 15 A. The tax rate that was --

16 Q. Yes.

17 A. I believe it was probably 35 percent but it's a calculation
18 that was off of the standard rates for the IRS taxes --

19 Q. But you thought it was 35 percent?

10:35 20 A. That's what I would recollect it to be but I -- I'm not
21 100 percent sure.

22 Q. Okay.

23 No further questions.

24 MR. JACOBS: I don't have any redirect, Your Honor.

10:35 25 THE COURT: You may step down. Please do not discuss

1 your testimony with anyone unless you're advised this case has
2 been completed. Have a good day.

3 THE WITNESS: Thank you.

4 (Witness excused at 10:35 a.m.)

10:35 5 THE COURT: Mr. Jacobs?

6 MR. JACOBS: Judge, with the exception of verifying
7 that all of the exhibits I intended to move into evidence have,
8 in fact, been received – and I reserve my right to confirm that
9 – the government has no further evidence to offer and would rest
10 its case in chief.

11 THE COURT: All right, what we'll do is take another
12 break. We have to go down our list of exhibits. There were a
13 lot of exhibits so we want to make sure all of the exhibits are
14 accounted for. And we will let you know where we stand in that
10:36 15 regard and you'll have to return to us after that's done. You
16 can leave those in your chairs. Or put them into your
17 notebooks.

18 THE BAILIFF: All rise.

19 (Jury out at 10:36 a.m.)

10:37 20 THE COURT: Be seated, please.

21 What I'd like to do is have you review the exhibits
22 with the clerk and just satisfy yourselves that everything has
23 been accounted for. And also, please take note of any need to
24 redact portions of various exhibits inasmuch as Social Security
10:37 25 numbers or other personal identifiers that are not essential to

1 the case and may be subject to disclosure and misuse is
2 eliminated or blocked out. When you've done that we'll give the
3 government a chance to rest formally.

4 But before we do all of that we need to go back to
10:38 5 something that we talked about earlier, and that is whether or
6 not Mr. Stuart still is of the view that he does not wish to
7 testify in this case.

8 Mr. Stuart, earlier we discussed whether or not you
9 would like to testify and you indicated to the court, after
10:38 10 consultation with counsel, that you are aware of your right to
11 testify and that you are knowingly and voluntarily declining to
12 testify and that no person has used any force, threat or
13 intimidation to get you to waive your right to testify in this
14 case. Does that remain true?

10:38 15 THE DEFENDANT: That's true.

16 THE COURT: And you agree totally with what your
17 attorney has said and you reaffirm everything you said
18 previously regarding your right to testify and the waiver.

19 THE DEFENDANT: Yes, I do.

10:38 20 THE COURT: Very well. We'll proceed accordingly.
21 We'll take a break and the defense can formally rest if all
22 exhibits have been accounted for on both sides and the jury will
23 be fully apprised.

24 After all of that is done we will talk briefly about
10:39 25 the instructions. I know that there was an issue respecting the

1 instructions. One second here.

2 (Brief pause.)

3 THE COURT: We'll make sure that we're all on the same
4 page and we'll talk about how much time you will need for
10:39 5 closings, et cetera. I would like to work out all of the
6 logistics during our break inasmuch as I have another proceeding
7 starting at 12:00 o'clock that may take about an hour or so.
8 And I know you want time to prepare. All right? So we'll
9 resume after you've had a chance to confer with the clerk and
10:40 10 all the exhibits are accounted for.

11 MR. JACOBS: Thank you, Judge.

12 (Recess taken at 10:40 a.m., until 10:57 a.m.)

13 THE COURT: Be seated, please. Have the parties had a
14 chance to review with the clerk all of the exhibits that have
10:58 15 been offered?

16 MR. JACOBS: Yes, the government has, Your Honor.

17 MR. BERNHOFT: Yes for the defense, Your Honor.

18 THE COURT: Are you satisfied that all the exhibits
19 offered have been properly accounted for and/or have been
10:58 20 received?

21 MR. JACOBS: The government is, Judge.

22 MR. BERNHOFT: The defense is satisfied.

23 THE COURT: All right. With that, are you prepared to
24 close in front of the jury, Mr. Jacobs?

10:58 25 MR. JACOBS: That is, to rest, Your Honor.

1 THE COURT: And Mr. Bernhoft, is that correct?

2 MR. BERNHOFT: Prepared to do closing argument?

3 THE COURT: No, to close your case.

4 MR. BERNHOFT: Oh, yes. Yes, Judge.

10:58 5 THE COURT: After that we'll release the jury until
6 approximately 1:30. Will that provide you with sufficient time
7 to prepare?

8 MR. BERNHOFT: For the defense, Judge, I would
9 respectfully request that we begin closing argument at 3 p.m. to
10:58 10 allow both Mr. Jacobs and myself adequate time to prepare to
11 close.

12 THE COURT: Mr. Jacobs?

13 MR. JACOBS: I mean, that's fine with me, Judge.

14 THE COURT: I'd rather not -- how much time do you
10:59 15 think you'll need for your closing arguments? Mr. Jacobs?

16 MR. JACOBS: I would estimate 45 minutes for my
17 initial closing and 10 minutes for my rebuttal.

18 THE COURT: And Mr. Bernhoft?

19 MR. BERNHOFT: 30 to 45 minutes for my closing
10:59 20 argument, Judge.

21 THE COURT: I think we probably should start a little
22 earlier. Let do it at, say, 2:30 -- or 2:00 or 2:30.

23 MR. BERNHOFT: 2:30 would be great, Judge.

24 THE COURT: All right, 2:30. All right, we'll bring
10:59 25 them back.

1 THE BAILIFF: All rise. Court's in session.

2 (Jury in at 11:00 a.m.)

3 THE COURT: Be seated, please.

4 Counsel?

11:00 5 MR. JACOBS: Yes, Your Honor, the government having
6 confirmed that all of the exhibits it's moved in have been
7 received, it rests its case in chief.

8 THE COURT: Very well. Mr. Bernhoft?

9 MR. BERNHOFT: Your Honor, the defense rests.

11:00 10 THE COURT: Very well. We'll proceed accordingly.

11 Members of the jury, with that it is now necessary for
12 the Court and counsel to prepare for closing arguments which
13 will take place this afternoon. In order to give the parties
14 adequate time to prepare and to also give you a chance to
11:01 15 stretch your legs and not remain cooped up in the jury room, we
16 will break until 2:30. I also have another proceeding and,
17 quite frankly, would like a chance to eat lunch.

18 So, with that, we will break until approximately 2:30.
19 As usual, please do not discuss this case with anyone. Do not
11:01 20 do any research. Do not do any blogging or any type of social
21 media that might affect your ability to proceed in accordance
22 with the law as I've explained it and will explain during the
23 final instructions. Have a good lunch and please come back
24 refreshed.

11:02 25 Let me also ask that before you leave, speak with the

1 bailiff regarding your ability to deliberate after hours, that
2 is, whether or not you are able to deliberate after 6:00 o'clock
3 tonight if necessary. You can decide for yourselves whether you
4 should deliberate after 6:00 p.m. Ordinarily we will break at
11:02 5 about 6:00 p.m., but I will give you a chance to weigh in on
6 that subject. And if you do deliberate after 6:00 p.m. we will
7 provide food for you.

8 You should also take into account whether or not you
9 are parked in a location that will require you to move your
11:03 10 vehicles, and in order to accommodate you I will go so far as to
11 make sure that you can get inside this building to park your
12 cars if necessary so that you have a warm convenient lighted
13 place to park if necessary.

14 So please talk with the bailiff about those matters
11:03 15 and he will report back to us the result of your conversation.
16 All right?

17 We will break until 2:30.

18 THE BAILIFF: All rise.

19 (Jury out at 11:03 a.m.)

11:04 20 THE COURT: Be seated, please.

21 CONTINUED JURY INSTRUCTION CONFERENCE

22 THE COURT: We talked briefly about the instructions
23 earlier this morning, and I'd like to ask you to look at them
24 once more to satisfy yourselves that the instructions are in a
11:04 25 form that you find acceptable. And if not, I would like you to

1 state for the record the objections that you have to the
2 instructions as proposed.

3 (No response.)

4 THE COURT: Do you need a couple of moments?

11:04 5 MR. BERNHOFT: Please, Judge.

6 THE COURT: All right. We'll break for, say about
7 five or ten minutes?

8 MR. BERNHOFT: Oh, I just need 30 seconds. I just
9 have to find my note, please.

11:05 10 THE COURT: All right.

11 MR. JACOBS: Judge, am I correct, I think the Court
12 had said it would add the jury instruction that Mr. Bernhoft
13 requested?

14 THE COURT: I'm sorry, repeat that?

11:05 15 MR. JACOBS: Am I correct, I think the Court was going
16 to add 3.01?

17 THE COURT: Yes. Let me -- I'm going to get the
18 reprinted set of instructions.

19 (Recess taken at 11:05 a.m., until 11:15 a.m.)

11:15 20 THE COURT: Have you had a chance to review the
21 instructions as currently crafted?

22 MR. JACOBS: I have, Your Honor.

23 THE COURT: Do you have any comments, Mr. Jacobs?

24 MR. JACOBS: Your Honor, again, I believe that the
11:15 25 unanimity instruction that the government submitted was

1 appropriate. I note the Court has eliminated the specific
2 descriptions of the unanimity examples.

3 THE COURT: But for that is there anything else?

4 MR. JACOBS: No, there is not.

11:15 5 THE COURT: Does the defense wish to be heard
6 respecting one or more of the instructions?

7 MR. BERNHOFT: No, Your Honor. The jury instructions
8 as promulgated that I've reviewed I have no objection. I did
9 have one comment, I noticed in the first draft there was a
11:16 10 single page, use of electronic technology?

11 THE COURT: Oh, yes, I forgot to add that.

12 MR. BERNHOFT: But just adding that one to the package
13 and I have no objection to these instructions.

14 THE COURT: Well, I have been giving them that
11:16 15 instruction in various forms throughout so that will only be a
16 further reminder of the fact that they cannot use any electronic
17 means to assist them. I will add that.

18 I note the government's objection and I've concluded
19 that if it appears that there is any difficulty -- that the jury
11:16 20 has any difficulty I will reconsider that second paragraph. But
21 I do not see the second paragraph as essential, even though it
22 may be helpful.

23 Let me further state that I have given instructions
24 similar to the one the government tendered. But in light of the
11:17 25 defense objection I've concluded under the circumstance that it

1 will avoid any unnecessary issues, and also I am satisfied that
2 the instruction as crafted is sufficient under the circumstance
3 to provide the jury with essential guidance in deliberations.

4 All right. I will see you at 2:30.

11:17 5 Let me add, we've made arrangements for the jurors to
6 park so they won't be overly concerned getting out of here for
7 their security. I do that to make sure that jurors are relaxed
8 and are able to focus their deliberations on the law and the
9 instructions and the evidence as they find it. All right.

11:17 10 MR. JACOBS: Thank you, Judge.

11 THE COURT: So we will go after hours.

12 Let me also state that the front doors of the
13 courthouse are locked at 5:00 o'clock. But, to make sure that
14 this defendant has a public trial in all respects, there will be
11:18 15 a sign, as we've had posted previously in this case, indicating
16 that people can go to the Jackson Street entrance, which is to
17 your right and slightly behind you, to enter the building.
18 There will be security and that will include the usual
19 magnetometers that people will have to use to get in or out of
11:18 20 the building. When you exit tonight that's the exit you use if
21 we go after 5:00 o'clock.

22 MR. JACOBS: Thank you, Judge.

23 (Recess taken at 11:18 a.m., until 2:33 p.m.)

24 THE COURT: Are you ready to proceed?

02:35 25 MR. JACOBS: Yes, Your Honor.

1 MR. BERNHOFT: Yes.

2 THE COURT: All right. I have handed out the jury
3 instructions. I will ask the jurors to leave them face down
4 until arguments have been completed.

02:35 5 MR. JACOBS: Judge, if I could just, I meant to
6 mention this, they redacted -- our office redacted the exhibits
7 we had entered and in doing that they realized that one of the
8 exhibits wasn't correctly copied so I just have a replacement.
9 It's Exhibit 59.

02:36 10 I wanted to -- I think it's in the court's file but I
11 at least wanted to note that the original exhibit that was
12 filed, that this is a corrected copy for the court's record.

13 MR. BERNHOFT: Your Honor, may I bring up one point?

14 THE COURT: Surely.

02:36 15 MR. BERNHOFT: I had intended to display the good
16 faith instruction on the Elmo during a particular portion of my
17 closing argument. Will that be permitted?

18 THE COURT: You can use the Elmo.

19 MR. BERNHOFT: Thank you.

02:37 20 THE COURT: Bring them in, please.

21 Mr. Martin, you left your phone downstairs. It's at
22 the security desk.

23 THE BAILIFF: All rise for the jury.

24 (Jury in at 2:37 p.m.)

02:38 25 THE COURT: Please be seated. You have instructions

1 in your seats, I do ask that you turn them face down while the
2 attorneys argue. You will be able to look at them after
3 arguments have been completed.

4 You may proceed, Counsel.

02:38 5 GOVERNMENT CLOSING ARGUMENT

6 MR. JACOBS: May it please the Court, Mr. Bernhoft,
7 Mr. Stuart, ladies and gentlemen of the jury. Again, my name is
8 Matthew Jacobs. And as I indicated at the beginning, I
9 represent the plaintiff in this case, the United States of
02:38 10 America, the prosecution in a criminal case, and we're at that
11 point in the trial where all of the evidence you're to rely upon
12 to perform your function is in. It consists of the testimony of
13 the witness, the documents, the numerous exhibits that have been
14 brought in, the stipulations that have been read into the
02:39 15 record, summaries that have been presented in the case. And
16 this is my opportunity, as a party here, to discuss with you why
17 the evidence establishes certain facts and why those facts
18 establish the defendant James Stuart's guilt of the charges in
19 the indictment.

02:39 20 You will recall that the indictment in this case
21 charges Mr. Stuart with three crimes, three violations of
22 federal law: He's charged with tax evasion for the years 2005,
23 2006, and 2007.

24 The federal statute that describes that crime, 26
02:40 25 U.S.C. Section 7201, tax evasion, reads as follows:

1 "Any person who willfully attempts in any manner to
2 evade or defeat any tax imposed by the Internal Revenue Code or
3 the payment thereof shall be guilty of an offense against the
4 United States."

02:40 5 And at the end of the arguments of counsel - myself
6 and Mr. Bernhoft - the judge will read to you instructions to
7 explain to you, how do you determine, how do you perform your
8 function. You have this federal statute, what does it mean?
9 What do you have to decide to determine if the government has
02:40 10 satisfied its burden to establish the defendant's guilt beyond a
11 reasonable doubt?

12 And you'll be told that the elements of tax evasion,
13 there are basically three of them:

14 That there was a federal income tax due and owing by
02:41 15 Mr. Stuart for each of the years -- this is for each offense, so
16 each of the years.

17 "That Stuart intended to evade or defeat the
18 ascertainment, assessment, computation, or payment of that tax;
19 and that Stuart willfully did some act in furtherance of the
02:41 20 intent to evade tax or payment of the tax."

21 So these are what are called essential elements.
22 Those are the specific propositions that the government has to
23 prove beyond a reasonable doubt to establish the defendant's
24 guilt of tax evasion. And we have to prove that with respect to
02:41 25 each count separately, for 2005, 2006, and 2007.

1 Okay. So let's begin with tax due. What evidence was
2 introduced at trial to establish that Mr. Stuart had a tax due
3 to the federal government for 2005, 2006, and 2007?

4 You'll recall the testimony of Revenue Agent Bashaw,
02:42 5 Kathleen Bashaw, she was the last witness the government called.
6 She was an agent for the IRS, has worked there for nine years.
7 And she provided to you a summary, Exhibit 210, that takes the
8 income, the earnings that Mr. Stuart had in those years, 2005,
9 2006, and 2007, takes those earnings, plus his share of the
02:42 10 earnings from his business, New Age Chemical, some deductions
11 he's entitled to -- maybe when you file your tax returns, you
12 know, deductions may be for interest or real estate taxes, I
13 think she mentioned. After reducing for those, comes up with a
14 taxable income, and she presented to you a calculation of the
02:42 15 tax due that Mr. Stuart had for each of those years: 2005,
16 2006, 2007.

17 If you look at Exhibit 210 -- I'm not sure if it's up
18 here or not, but just to the -- yes. Here's Exhibit 210. And
19 again, she did for each year, she laid out here's the wages he
02:43 20 paid, the compensation he received. You may recall that there
21 were some checks that his sister Beverly Schlipp said yes, she
22 wrote these as compensation to him. In the early years there
23 were some direct deposits from a payroll company called Payroll
24 Data Services into his bank account. So that's income.

02:43 25 And then she did the calculation and determined that

1 he had tax due in each of these years. And then on -- that's
2 actually an earlier version of it. She also noted that in 2005
3 some taxes had been withheld, about \$18,000, so the actual tax
4 due was lower than that, I think it was about \$44,000 in 2005.
02:43 5 I inadvertently put in an earlier version.

6 So let's go back to the previous slide. And there was
7 evidence that supported Ms. Bashaw's testimony. You'll recall
8 that in the evidence came the testimony of Special Agent Rech.
9 Special Agent Rech had conducted a search warrant at New Age
02:43 10 Chemical in February of 2009, and from that he had obtained
11 records from them. He had their journals, their payroll
12 accounts.

13 He also went to banks and got bank records from them
14 for checks, he got records from Mr. Stuart's account. And
02:44 15 again, he had a summary of the payments that Mr. Stuart had
16 received in 2005, 2006, and 2007.

17 Then, you'll also recall that into evidence were
18 introduced a W-2 that had been issued to Mr. Stuart in 2005 by
19 Payroll Data Services for that first part of the year when he
02:44 20 was being paid as a W-2 wage earner and there was some
21 withholding in 2005.

22 Then there were some Forms 1099 introduced that were,
23 A, found at New Age Chemical, but were also filed with the
24 corporate tax returns that New Age Chemical filed and those
02:44 25 reflexed the earnings of New Age Chemical and that portion of

1 the earnings that Mr. Stuart was responsible for had to report
2 as income and paid taxes on.

3 And if we could skip ahead two slides.

4 Again, those are the summaries prepared by Special
02:45 5 Agent Rech. He laid out each of the payments, either the direct
6 deposits or the checks that New Age Chemical paid Mr. Stuart for
7 compensation.

8 I think that's 171, so that's for 2005.

9 The next year, Exhibit 172, is 2006. I can't read
02:45 10 that from here.

11 And then the next slide for 2007.

12 So, in evidence are the summaries of the payments,
13 either direct deposits or checks, made to Mr. Stuart that formed
14 the basis of Ms. Bashaw's testimony about, look, here's the
02:45 15 income he had in these years and here's the taxes he owed.

16 Would you go to the next slide, please.

17 Again, as I mentioned, and I'll just quickly run
18 through these, there were those Schedule K-1s that Mr. Stuart
19 had. They were attached to the corporate tax return for New Age
02:45 20 Chemical for each of the years in question for 2005, 2006, and
21 2007. But they were also found at his business. And each of
22 those K-1s told Mr. Stuart: Mr. Stuart - with his Social
23 Security number, it's been redacted out here - in the year
24 ending in 2007, you had \$189,000 of earnings from the company
02:46 25 that you are responsible for reporting.

1 Move to the next slide. No. Okay.

2 I guess we ran through it already. But there was a
3 K-1 for each of the years. For the year ending in 2006 --

4 And if you can move one slide back -- right.

02:46 5 For the year that ends in 2005, Mr. Stuart, you had
6 \$94,000 of earnings from your company you've gotta report. It's
7 like a partnership. The company doesn't pay for it, pay the
8 taxes on it, you have to pay the taxes on it. So then in 2005,
9 2006 and 2007 he received a K-1 saying not only do you have to
02:46 10 pay taxes on the wages you got, but because you're the owner of
11 this business you have to pay taxes on your share of the
12 earnings of this business. So there is the tax due.

13 And you'll recall that we know there's a tax due and
14 not paid because the records reflect that in 2005, you may
02:47 15 recall Mr. Stuart filed a return in which he said he didn't have
16 any wages, he didn't have any income from his business, he had
17 about \$631 in interest and dividends, so he didn't owe any
18 taxes. And actually he tried to get back the withholdings of
19 his income taxes that had been done while he was being a W-2
02:47 20 wage-earner through Payroll Data Services, and he also tried to
21 get back not just the withholding, he also tried to get back the
22 Medicare taxes and the Social Security taxes that had been
23 withheld from those payments as well.

24 Now, so that evidence establishes that Mr. Stuart had
02:47 25 a tax due for each of those years.

1 And if we could move past --

2 As I say, the summary of the taxes; the summary of the
3 payments; the K-1s for Mr. Stuart found at his business as well
4 as filed with the IRS.

02:48 5 And so, you may recall, we looked at how does
6 Mr. Stuart know he's supposed to file tax returns? How does he
7 know he's supposed to report his wages, report his income,
8 report his earnings from his business? Well, we know because
9 he's done it in the past.

02:48 10 And we introduced into evidence the returns that
11 Mr. Stuart filed for 2002, 2003, 2004. And on those returns, he
12 filed them jointly with his wife, and he reported wages from New
13 Age Chemical; he reported his share of the earnings from New Age
14 Chemical; he reported the taxes he owed; and he paid taxes on
02:48 15 it. So the evidence establishes that he knows he's required to
16 report that income, he's required to report those taxes, and
17 he's required to pay those taxes. So when he doesn't do that in
18 2005, 2006, 2007, we know that he's doing it intentionally.
19 He's aware of it. He's aware of his duty and he's not doing it.

02:49 20 And again, in those years in question we introduced
21 evidence of the income he was reporting. He was reporting wages
22 from New Age Chemical, income from the business, there was some
23 capital gains in one year. Again, he was reporting taxes owed
24 for each of those years.

02:49 25 And -- okay, again, I'm sorry. Okay.

1 So, again, the second element is that Mr. Stuart --
2 another element we have to prove is that he willfully performed
3 affirmative acts in his attempt to evade the payment of those
4 taxes. And what are those affirmative acts? What did he do so
02:49 5 that he wouldn't have to pay his payroll taxes?

6 Now, one thing he did was, he filed that 2005 tax
7 return in which he said, "I only have \$631 in interest and
8 dividends." So he filed a false tax return. He lied about the
9 income; he concealed the wages and the income he had from his
02:50 10 business, and he lied about his tax obligations.

11 So one, he filed a false tax return for 2005. But
12 after that, he simply stopped filing altogether. And, in fact,
13 Mr. Stuart didn't file for 2006, 2007, 2008. Didn't file for
14 2009 or 2010. Didn't file returns for any of those years. But
02:50 15 the failure to file itself, that's not an affirmative act. It's
16 evidence of intent, it's evidence that he's trying to avoid
17 paying taxes but, as the court will instruct you, that alone,
18 just failing to file a tax return, that's a -- I guess -- I was
19 raised a Catholic, that's a sin of omission, not a sin of
02:51 20 commission. So that that's not an affirmative act.

21 But nonetheless, Mr. Stuart committed affirmative
22 acts, the evidence shows, to help him evade his taxes. Because
23 maybe you'll recall, in 2005 he was receiving his salary through
24 Payroll Data Services and they were withholding taxes. You may
02:51 25 recall David Schwarz, I think he was the second witness to

1 testify, and they were discussing the services they were
2 provided, and that Mr. Stuart's status changed. He changed
3 himself -- he didn't want to have any withholdings so he changed
4 himself from a W-2 wage-earner that they were going to withhold
02:51 5 taxes from his salary and pay those over to the federal
6 government, to an independent contractor so that they wouldn't
7 withhold payroll taxes.

8 So, again, that's an affirmative act that he does
9 because he doesn't want to pay taxes. He knows he's supposed
02:51 10 to, he's done it in the past, but he doesn't want to. So he
11 changes his status so they won't withhold on him. And so they
12 change from a W-2 wage-earner in 2005, in the mid year, to a
13 1099 where he gets the full amount of his compensation without
14 any withholding.

02:52 15 But it gets -- it goes on. There's more affirmative
16 acts. Because he didn't like the fact that the 1099 was being
17 filed with the federal government because then the federal
18 government knew he had this income. So he did some more. And
19 you may recall, first he was telling Mr. Schwarz that he wanted
02:52 20 him to reverse the 1099 because he didn't like the fact that the
21 federal government was getting information about his income. So
22 he directed I think his sister, the testimony was, to stop
23 paying him through Payroll Data Services because they were
24 either going to withhold and issue a W-2 or they were going to
02:52 25 not withhold but issue a 1099 and tell the federal government,

1 well, he did receive all this income he's supposed to be paying
2 taxes on. So he said pay me directly through New Age Chemical.

3 So again, that furthered his efforts to avoid paying
4 taxes because it would conceal the income he was getting from
02:52 5 New Age Chemical. And so in the middle of 2006 he starts
6 getting checks directly from New Age Chemical, and it's almost
7 the best of all worlds. There is no withholding. There is no
8 W-2 filed with the federal government and no withholding, and
9 there's no 1099 so the federal government doesn't know about
02:53 10 that compensation he's receiving either. So again, that
11 furthers his efforts to evade the taxes, evade having to pay
12 those taxes. IRS won't know about the money he's receiving.

13 And then finally, in 2007 he goes even further. In
14 2007 he changes how his compensation is paid for him because
02:53 15 it's being paid for him in his own name. And so if you look at
16 the books and records of New Age Chemical, which might be in
17 good order, they'll reflect, hey, we did issue these checks to
18 him, these payroll checks to him and they're going to him in his
19 own name, so if the government heads ahold of those they'll know
02:53 20 how much money he's being paid. So he changed it so the checks
21 aren't being paid to him anymore, they're paid to New Age
22 Chemical, Ltd. Drawing Account.

23 And he doesn't even put them into his own personal
24 bank account. He opens a new bank account, opens a new bank
02:54 25 account in the name of Delafield Trust because again, he's

1 trying to insulate himself, conceal his income from third
2 parties, from the IRS, so they won't know how much he's being
3 paid. He gets the checks issued to somebody else and they go
4 into this new bank account for the benefit of the Delafield
02:54 5 Trust.

6 And you can see it in the forms that are introduced.
7 In early 2005 there's a W-2 issued by Payroll Data Services for
8 the first part of the year when he's a W-2 wage-earner. And
9 again, it's issued to Mr. Stuart. It said for that first part
02:54 10 of the year he's paid \$125,000, and they withheld \$18,786. But
11 Mr. Stuart doesn't like that. So he has himself changed to a
12 1099. And when you go to the 1099 for that same year 2005, he
13 gets another \$53,600, but boom, no withholding.

14 So his plan is working. Not having to have any
02:54 15 withholding, the IRS doesn't have my money, I don't have to pay
16 the taxes.

17 We move into 2006 and he's still getting the 1099 from
18 Payroll Data Services. So in the first part of 2006 he receives
19 \$40,200 but, again, no withholding.

02:55 20 So again, you can see how his plan, his scheme is
21 developing. And that's a theme that runs through this case, is
22 that Mr. Stuart's plan, his scheme, his strategy to avoid,
23 evade, and not have to pay any taxes develops over time.
24 Because maybe the first one isn't working so it continues to
02:55 25 develop.

1 So then he stops being paid through Payroll Data
2 Services and then stops getting these 1099s issued.

3 What else does he do? Because he's aggressive. And I
4 know in Mr. Bernhoft's opening he talked about what kind of
02:55 5 person is a tax cheat. Are they going to communicate directly
6 with the IRS or are they going to try to stay below the radar?

7 And I think Mr. Stuart tried a little of both. I
8 think there was testimony about both. But definitely he's in
9 the IRS's face. He's aggressive. You know, there's some people
02:56 10 who take the passive approach and there's some people who take
11 the in-your-face, I'm gonna stake out a position, and I'm gonna
12 get in your face and I'm gonna say "I'm not paying taxes."

13 And you see it here with Mr. Stuart, what does he do?
14 First he files an amended -- this is in late November of 2005 I
02:56 15 believe the testimony was -- he files first an amended 1040X.
16 And he asks for all of the taxes that he paid in 2002, saying it
17 turns out I don't have any wages, I don't have any earnings, and
18 I want all those taxes back. And he's aggressive. He's -- as I
19 think the testimony demonstrated, his demeanor is -- he's
02:56 20 bullying them. He's in the face of the IRS. He's telling them,
21 he's demanding results, he wants his money back. That's his
22 approach. That's the scheme that he's gonna try.

23 And so again, how do we know that he's acting
24 intentionally, that he's acting willfully? Well, we know
02:57 25 because he continues to act in spite of all of the information

1 he received that he is wrong. And he receives it from numerous
2 sources.

3 For example, we see the IRS itself. It responds to
4 his claim and it tells him, your claim, in July of 2006, in
02:57 5 responding to his November 2005 amended tax return, the IRS
6 tells him: "There is no basis to allow any part of your claim.
7 The income you received in 2002 is clearly wages and is taxable,
8 and you must file a lawsuit to pursue your claim."

9 You know, the IRS is dealing with 140 million tax
02:57 10 returns. They get this claim, sort of off the wall, I don't
11 have any wages, and they respond: "It's baseless. If you want
12 to pursue this, file a lawsuit." But that's not Mr. Stuart.

13 The IRS continues to respond to his filings because he
14 files, again, amended returns for 2003 and 2004. And, of
02:58 15 course, he filed his 2005 tax return where he reported virtually
16 no income, just the interest and dividends, and again asked for
17 a refund of all the withholdings.

18 And the IRS consistently tells him -- and it's
19 important because when you have to judge someone's willfulness,
02:58 20 whether they're acting intentionally, you look at: what
21 information did they have; what advice were they given; who was
22 giving them the advice, and how did they act in response to it.

23 And you see the IRS sends him -- consistently sends
24 him letters.

02:58 25 In March of '07, about his 2002 amended return.

1 In April of 07, about his 2003 amended tax return.

2 In June of '07, about his 2005 tax return.

3 And the IRS consistently tells Mr. Stuart: "Your
4 information is frivolous; there's no basis in law; it's been
02:58 5 repeatedly rejected by courts as without merit; and there's
6 potential for criminal prosecution."

7 And as you'll see in those letters --

8 Just scroll forward.

9 For example --

02:59 10 Why don't you scroll forward one more.

11 Again, the letter tells him: "Our office has
12 completed review of your claim for refund of taxes." This is
13 his first letter. "There's no basis to allow it." Tells him
14 how to pursue it. If he wants to take that position, pursue it
02:59 15 in court but we're telling you your position is frivolous.

16 If you could scroll forward again.

17 Then they send him letters telling him --

18 If you could scroll again. One more. One more. I'm
19 sorry. Maybe you could back up one. I'm sorry. Could you
02:59 20 highlight the first paragraph.

21 Again, the IRS tells him his claim is frivolous. But
22 they also tell him, look, seek advice, get competent accounting
23 or legal advice. Because again, the IRS is dealing with 140
24 million taxpayers. They're not going to do legal research for
03:00 25 each individual taxpayer. The IRS tells him his position is

1 frivolous, advises him to get legal counsel, and they do provide
2 him some citations to the Internal Revenue Code.

3 And if you could scroll forward.

4 Because if you look at Exhibit, I think it's 40 --

03:00 5 If you can go forward.

6 They tell him: "General information on filing
7 requirements can be found here in the United States Code, Title
8 26." That's the Internal Revenue Code. So they cite to him the
9 law where he can look for it. And again, they recommend "go
03:00 10 find competent legal help about your positions." And, in fact,
11 I think from the testimony here Mr. Stuart had competent
12 accounting and legal help, or at least competent accounting
13 help, in the form of Patrick Walsh, Daniel Hau, his niece.

14 Scroll forward.

03:01 15 And the IRS also sent him a pamphlet. And if you
16 looked at the pamphlet here, it's called "Why Do I Have to Pay
17 Taxes?" It addresses some of the issues that Mr. Stuart is
18 raising in his filings.

19 If you could just scroll forward to the next page.

03:01 20 And it talks about various scams that people have
21 tried, various tax scams not to pay taxes, and it explains the
22 truth as to each one of those. So it addresses them head-on and
23 tells him "these are frivolous, you can't do that." But
24 again --

03:01 25 If you could scroll forward.

1 -- Mr. Stuart doesn't listen to that because he's
2 bent -- he's staked out his position and no one's gonna convince
3 him to the contrary.

03:01 4 THE COURT: One second, I think you need to flip
5 your --

6 MR. JACOBS: No, that's right. The sticky is
7 upside-down.

8 THE COURT: All right.

9 MR. JACOBS: Now, again, I think in opening
03:01 10 Mr. Bernhoft suggested that Mr. Stuart was just -- he was -- "I
11 am tax curious, I guess I'd say." You know, he's just confused
12 and curious and just wants information. But the evidence
13 demonstrates that's not the case at all. Because we can see
14 what actually Mr. Stuart's motives are. We can see them because
03:02 15 in corresponding with Patrick Walsh he provided some notes.

16 If you just scroll forward I think it will be there.

17 For example, what does Mr. Stuart tell his accountant?
18 This was in 2004 when his accountant, Mr. Walsh, was preparing
19 his 2003 tax return. What does he tell him at that point?

03:02 20 He says: "Pat, info for taxes, of react K-1, form
21 will change. Be as creative as you want here and get my tax
22 bill as low as possible."

23 So we know what his motive is. This isn't confusion.
24 This isn't "I'm uninformed." This is "I don't want to pay
03:02 25 taxes." And so far it's not working, I guess.

1 So that was into '04. So then, in '05, when Mr. Walsh
2 is preparing his -- this is early 2005, Mr. Walsh is preparing
3 Mr. Stuart's 2004 tax return, he sends him another note and he
4 says: "Here is all my stuff for the 2004 taxes. I remember
03:03 5 last year how I got caught up in the AMT tax and the whole thing
6 makes me furious."

7 Fair enough.

8 "See what you can do about my not getting caught up in
9 it this year. I want to take every deduction you can think of
03:03 10 and will take my chances on an audit."

11 So we see what Mr. Stuart's motive here is. This is
12 early '05. Spring of '05 I think Mr. Walsh said when he's
13 preparing his tax return. And, in fact, it's just a
14 progression. First "be as creative as you can be." Next is
03:03 15 "take any reductions you can, I'll take my chances on an audit."
16 And come November of '05, what is it? "I don't even have any
17 wages. I want all my taxes back."

18 And the next year, after Mr. Walsh refuses to go
19 along, he just files a tax return reporting 500 or \$6 00 worth
03:03 20 of interest and income. You can see this is a progression, I
21 don't want to pay any taxes, apparently it's not working, so now
22 I'm just going to go off the grid.

23 You see the same thing --

24 I'm gonna come back to that. We see -- well --

03:04 25 You may also recall that after Mr. Stuart -- well,

1 after Mr. Walsh refused to prepare Mr. Stuart's tax returns,
2 Mr. Stuart went to Daniel Hau - Mr. Hau, an accountant also in
3 this area, a very experienced accountant in this area. And
4 again, you see that Mr. Stuart is getting specific direct advice
03:04 5 from people telling him you have to pay taxes. And Mr. Stuart's
6 coming up with a variety of ideas, one of which concerns the
7 distinction between James Stuart in all caps and the James
8 Stuart with just initial capital letters.

9 But even then, Mr. Hau, when the issue comes up, tells
03:05 10 Mr. Stuart point blank, tells him: "Because of the positions
11 that you are taking on these tax matters, I am obligated to ask
12 you that you acknowledge that I have advised you that you, James
13 Stuart, are required to pay taxes associated with the Social
14 Security number which bears your name spelled out in capital
03:05 15 letters."

16 Again, Mr. Stuart isn't interested in advice. He
17 isn't interested in being informed. He doesn't -- he's been
18 told "seek competent advice." "Seek competent advice from
19 accountants." That's what the IRS tells him. And so when he
03:05 20 does that, and when he gets the advice he doesn't like, when it
21 doesn't agree with his strategy, he rejects it. And that's how,
22 again, we know he's acting intentionally. So --

23 I'll come back to that.

24 So then how do we -- so we start to assess who else
03:05 25 gave Mr. Stuart advice and how did he respond to it? So, let's

1 start with Patrick Walsh. You may recall Mr. Walsh, I think
2 he's in his mid 70s, he's been an accountant I think he said for
3 35 years, was the managing partner of a large accounting firm
4 here in Wisconsin. More than that, he's a long-time friend of
03:06 5 the Stuart family, a long-time advisor and consultant. I
6 believe he testified that the defendant's father trusted and
7 relied upon him so much that he asked Mr. Walsh to look after
8 his family, continue to give them advice. And he prepared
9 Mr. Stuart's tax returns for many years.

03:06 10 But when it finally came to the 2005 tax return, and
11 Mr. Stuart decided he wasn't going to have any withholding,
12 wasn't going to pay any taxes, what did Mr. Walsh say? He told
13 him "it's unlawful." He didn't mince words. He said, "This is
14 fraudulent. You're going to get yourself in trouble. You're
03:06 15 never going to get away with this. I can't prepare your tax
16 returns if you're gonna keep this up." Again, competent
17 accounting advice. But, of course, it's not advice Mr. Stuart's
18 going to accept, because it doesn't comport with his strategy,
19 how am I gonna not pay taxes.

03:07 20 And, in fact, Mr. Walsh indicates that he offered to
21 provide him his Tax Master Guide. "If you want to look through
22 it you can, but I'm telling you, I've been an accountant for 35
23 years, you have to do these things." But Mr. Stuart wouldn't
24 accept it.

03:07 25 Mr. Walsh met repeatedly with Mr. Stuart trying to

1 convince him. And how did Mr. Stuart respond to that? He told
2 -- I think he told Mr. Walsh that he was stupid, that he had
3 bought in, that he was really essentially part of the scam
4 because he was making his money out of it. Just rejected that
5 advice.

03:07

6 Mr. Walsh met with Mr. Stuart on several occasions.
7 In one occasion Mr. Walsh met with Mr. Stuart even with
8 Mr. Stuart's niece. And you will recall Allison -- Allison
9 Reese, I think it's Putland now -- again, another woman with an
10 accounting degree, is a director of accounting of a company, is
11 the defendant's niece, learns of what the defendant is doing,
12 and what does she do? First, she does research. She goes to
13 the Internet, goes to the Internal Revenue Service's website,
14 looks up cases identifying the claims that Mr. Stuart is making,
15 and goes to meet with him in person. Tries to provide him with
16 information. But, of course, Mr. Stuart doesn't want it because
17 it comes from the IRS. He's got another source from the
18 Internet. So he's going to rely upon that because he won't take
19 advice that's contrary to his position. They're not competent
20 unless they'll agree with his ideas.

03:08

03:08

21 And, in fact, what does he tell his niece, the one
22 with the college degree in accounting? That she's brainwashed;
23 that she's stupid. That's how he responds to competent
24 accounting advice in this area. He rejects it out of hand.
25 It's just straight arrogance because it doesn't agree with what

03:09

1 he wants to do.

2 In addition, he's taking the same position with the
3 Wisconsin Department of Revenue. And you can read in their
4 decision here --

03:09 5 If you could scroll forward.

6 -- they describe --

7 I don't know if that's -- if you go forward or not, if
8 that's already -- no, maybe get back and just highlight it. No,
9 just on the second page, the yellow. If you would enlarge the
03:09 10 yellow on the second page. Thank you.

11 And we know, again, Mr. Stuart -- I think at some time
12 in one of the documents identifies him a citizen of the Country
13 of Wisconsin. He's obviously not paying their taxes either
14 because, as they indicate, what does Mr. Stuart do with his
03:09 15 state tax returns? He again reports the \$631 and says -- that
16 his wages did not -- that wages he got in 2005 don't constitute
17 wages and he doesn't have any taxes.

18 If you can move to the next page and enlarge.

19 Right. That he only reported, again, the \$631.

03:10 20 And, of course, he attaches one of these IRS Forms
21 4852 Substitute Form W-2 that corrects it to say he has no
22 wages.

23 Okay. So there. He files that with the State of
24 Wisconsin. And he ends up in a legal action in front of the
03:10 25 Wisconsin Tax Appeals Commission. And how -- and how -- so they

1 issue a decision. This decision is issued in June of --

2 If you could just highlight that. Yes. Thank you.

3 No, just the top. Thank you.

4 June 2007. And the Tax Appeals Commission -- now

03:11 5 that's a court. How do you decide what the law is? You go to
6 court and the court tells you what the law is. Right? And the
7 court tells him: "In light of the well established authority
8 cited above, petitioner's claims are groundless, frivolous, and
9 a waste of state resources."

03:11 10 They tell him. He gets an appeal decision in 2007.
11 Is that good enough for him? No. Does he begin filing tax
12 returns? Does he file for 2007 or 2006, 2007 or even after that
13 2008? No. Again, because it doesn't comport with what he wants
14 to do with the strategy he has, he rejects that as well. But he
03:11 15 doesn't even appeal this decision.

16 And again, you can tell Mr. Stuart knows that
17 educated, experienced, trained individuals in the areas of taxes
18 and tax law -- you know, Patrick Walsh, Daniel Hau, his niece,
19 the Wisconsin Tax Appeals Commission, they all tell him his
03:12 20 arguments are frivolous, they reject them. So what does he do?
21 He sends a letter and puts it in the paper and he --

22 I think if you scroll forward it will be -- I think if
23 you still scroll forward -- maybe not though.

24 You know, he describes -- and I have to say this is a
03:12 25 little different than some of the other arguments because, as I

1 say, Mr. Stuart is sort of -- you know, he's changing and
2 developing. He issues a letter when he says, "The Constitution
3 clearly says that states cannot demand payment of debt in
4 anything other than gold or silver which our federal government
03:12 5 conveniently confiscated in the 1930s, leaving us with fiat
6 notes worth nothing."

7 But, more specifically --

8 If you can scroll forward one more.

9 He says, "Don't ask your accountant or lawyer, because
03:12 10 they derive their lucrative incomes at your expense."

11 So again, what does he say? He's advised to seek
12 competent counsel. And how does Mr. Stuart respond to that?
13 Every counsel he gets tells him what he's doing is unlawful,
14 fraudulent, incorrect. The Wisconsin Tax Appeals Commission.
03:13 15 Because all that competent counsel is telling him he's wrong.
16 So what he says is "don't talk to lawyers or accountants." Yes,
17 don't talk to the people who have the education, training and
18 experience, rely on what you can find on the Internet.

19 So again, that's how we know it's willful; that this
03:13 20 isn't someone who is confused and trying to find answers. And
21 you look at his correspondence --

22 If you could scroll forward again, please.

23 I'll make a side point here. Because you may recall
24 that in some of Mr. Stuart's correspondence he talks about the
03:13 25 man James A. Stuart and the Trust James A. Stuart in all capital

1 letters, and how the Trust in all capital letters has a Social
2 Security number but how the man does not. And you'll see that
3 in his correspondence. But ironically when it's to his
4 advantage --

03:14 5 Do you want to redact that? Thanks.

6 (Brief pause.)

7 MR. JACOBS: But there is Mr. Stuart, obviously not
8 the Trust because I assume the Trust doesn't drive, but there's
9 Mr. Stuart with a date of birth of 1943, white male, blue eyes,
03:14 10 brown hair, 200 pounds, six feet tall, obviously not the legal
11 entity Trust. There he is in September of 2006. So when it's
12 convenient for him he's got a Social Security number, but when
13 it's gonna make him pay taxes, well, no, it's this Trust that
14 has a Social Security number.

03:15 15 If you could scroll forward again.

16 Again, we see that progression of checks paid to
17 Mr. Stuart.

18 Why don't you just scroll through these. Thank you.

19 Including the ones in '07 when he, again, starts
03:15 20 putting those checks into his New Age Chemical drawing account
21 that he opened at Waukesha State Bank.

22 If you right click, and then up at the top go to zoom.

23 I think I mentioned this earlier. This was part of
24 the affirmative acts. Obviously the slides are not in perfect
03:15 25 order.

1 That he opens the account in 2007 so that he can
2 receive checks payable to someone other than himself and put
3 him -- put them into an account he controls but not in his own
4 name to conceal his income. He opens this account for the
03:15 5 benefit of the Delafield Trust.

6 Why don't you scroll through.

7 This is the Amended Tax Return that he filed. First
8 in '02, again, reducing all of his income. These are in
9 evidence. Then his 2005 tax return. And again, where he
03:16 10 attaches the W-2, his own W-2, where he says he actually had no
11 wages in '05. He makes up his own W-2 in April of '06.

12 Keep scrolling through. Maybe if you could back up
13 one. Two. I'm sorry. Significantly -- maybe even one more.
14 I'm sorry.

03:16 15 On one of the tax returns he includes one of these
16 forms, a Form 4852, Substitute For Return. And this is where
17 because a W-2 or a 1099 has already been issued for him, that
18 says he had this income and had these withholdings, he's trying
19 to convince the IRS that that one's wrong; that that's not my
03:17 20 wages, those aren't -- you know, I need this money that was
21 withheld from my wages paid back to me. And he files one of
22 these Forms 4852. And where have we heard of that form before?

23 If you could scroll forward.

24 You may recall that Mr. Walsh, he gave Mr. Stuart
03:17 25 something from a professional accounting association he belongs

1 to, and it specifically tells him. It says -- it describes
2 scams that tax protestors and tax defiers are concocting. And
3 in this scam a taxpayer attaches to his or her return either a
4 Form 4852, Substitute for W-2, or Corrected Form 1099. And it
03:17 5 says, "The taxpayer may include a statement saying he or she is
6 rebutting information submitted to the IRS by the payer."

7 That's exactly what he's doing. And Mr. Walsh tells
8 him "This is an identified scam." This is unlawful. I'm
9 showing you. Here's evidence of this." But Mr. Stuart doesn't
03:18 10 want to hear of it.

11 And it talks about citing to statutory language behind
12 IRC 3401 and 3121, and references to the company's refusal to
13 issue a corrected Form W-2 for fear of IRS retaliation. And you
14 see that same language in Mr. Stuart's correspondence with the
03:18 15 IRS. He's doing this exact scam that Mr. Walsh talked to him.
16 And again, you saw Mr. Walsh testify. You heard his background,
17 his long-time relationship with the Stuarts. And you hear how
18 explicitly he was with Mr. Stuart, how his long-term
19 relationship. But did Mr. Stuart listen? No.

03:18 20 Just scroll forward.

21 Again, the documents given to Mr. Stuart by Mr. Walsh
22 even describe a bunch of frivolous arguments: You know, that
23 wages are not income; that the 16th Amendment concerning
24 Congressional power to lay taxes on income was never ratified.
03:19 25 Again, these are the scams that Mr. Stuart is picking up

1 himself. But he's been warned early on that this is fraudulent
2 and frivolous -- not just by the IRS, but by his long-term,
3 long-time close family friend and consultant. But he's not
4 listening.

03:19 5 Now, you also have evidence that Mr. Stuart is acting
6 willfully because his claims, they sort of morph over time, they
7 sort of develop over time. He's trying out different things.
8 For example, this is a letter early on in '06.

9 I think if you just scroll forward it will go.

03:20 10 He talks about early on in his request to get a 2002
11 refund. In his initial claims he's saying that -- he's
12 submitting the 4852, and he can't understand why he's not
13 getting it.

14 Could you scroll forward? Could you just scroll
03:20 15 forward again? No, keep going.

16 And what does he tell him? He says, "Affiant," and
17 this is Mr. Stuart, "works as a nonprivileged executive for New
18 Age Chemical, a private sector, for profit, manufacturing firm
19 incorporated in the State of Wisconsin in the year 1985 that is
03:20 20 not a governmental instrumentality. Affiant's earnings are paid
21 to him in exchange for his time and labor and are not identified
22 within the limited definitions of--" and, again, there are those
23 sections that were in the IRS's dirty dozen that Mr. Walsh gave
24 him, "3401 and 3121. Affiant received no such wages from New
03:21 25 Age Chemical."

1 So initially his claims are the money I'm receiving
2 are not wages. Okay? And again, that's the argument that the
3 Wisconsin Tax Appeals Commission rejected.

4 Scroll forward.

03:21 5 Then as the letters progress, this is March of 2006.

6 Scroll forward.

7 And again, is this someone who is looking for answers,
8 who doesn't really know, who is confused, or is this someone who
9 has staked out a position and is in the face of the IRS and says
03:21 10 you're wrong and I'm right? Because here's what he says: "With
11 the above statute in mind, I hereby demand that I either receive
12 my refund, receive a satisfactory explanation as to why the
13 refund is denied, or an answer to my letter requesting
14 administrative appeal and request for cure. It is my opinion
03:21 15 that the IRS is skating on thin ice regarding this matter and
16 appears to be willfully denying my claim, which is an act with
17 dire repercussions."

18 You know, as I say, some people fly under the radar,
19 some people get into people's faces to get what they want.

03:22 20 And so if you scroll forward, you see again how
21 Mr. Stuart's --

22 He says, "The company has listed payments as wages.
23 I'm rebutting that claim." He says, "Now, I am not employed in
24 a trade or business, nor am I an officer of a corporation. The
03:22 25 amounts listed in the W-2 are incorrect."

1 So not only are his payments not wages, he's not
2 employed as a trade or business. And we continue on with
3 Mr. Stuart. He says --

4 I think it keeps going.

03:22 5 Now, this is a little harder because it's a little
6 longer. But again, the tone is significant. The last sentences
7 say: "Therefore, there is nothing for you to research--" He's
8 not looking for the IRS to do any research; he's telling them
9 what the answer is. "--as justification for my actions are
03:22 10 clearly spelled out in the code. I therefore demand that the
11 claimed refund stated on my 1040 be returned to me immediately.
12 This stalling game is a ruse to discourage honest, law abiding
13 citizens who are following the law to the letter and I will have
14 no part of it as I will not be discouraged. I consider this
03:23 15 money in effect stolen from me by my employer and I want it
16 back."

17 So again, this isn't I don't understand it, I'm
18 operating under some mistake; no, "I've staked out my position
19 and I'm sticking to it."

03:23 20 You see again as his correspondence continues. He
21 says, "Now knowing" -- now, again, he's not claiming confusion,
22 he's asserting his own personal knowledge -- "that the IRC
23 actually does say" -- or "what the IRC actually does say about
24 who owes income taxes, it is clear that such tax does not apply
03:23 25 to me."

1 Again, this is not I am tax curious, this is I don't
2 understand, this is I disagree. You're wrong and I am right.
3 You're stupid. You're brainwashed, you know, because you went
4 to school; you didn't learn it on the Internet.

03:24 5 And you listen to Mr. Stuart again. He obviously
6 treats other third parties, but how he responds to the IRS.

7 And if you scroll on.

8 And again, he says things like "I, James A. Stuart,
9 Jr., swear that I am a natural person residing in the City of
03:24 10 Delafield in Waukesha County in our Country of Wisconsin."

11 He says, you know, with that premise -- and as you see
12 these premises -- how is the IRS to convince him to the
13 contrary? If his premises are, here, here's my position, I live
14 in the Country of Wisconsin.

03:24 15 And again, you see that again, where he starts with a
16 fanciful, fictionalized premise and then demands answers from
17 the IRS.

18 As his correspondence continues, he says:

19 "James A. Stuart, Jr. attests that he is a living
03:24 20 human being who has loaned his consciousness to, and is acting
21 in the capacity of, the Office of Trustee of the James A.
22 Stuart, Jr. Social Security Trust.

23 "James A. Stuart, Jr., through his own independent
24 study, attests that it is the James A. Stuart, Jr. Trust that
03:25 25 has received income, and not the natural man, James A. Stuart,

1 Jr.

2 "James A. Stuart, Jr., though, through his own
3 independent study, attests that he is not, nor has he ever been,
4 in the possession of a Social Security number--"

03:25 5 I guess except the one he used to get a driver's
6 license.

7 "--a Social Security number or a Social Security card,
8 therefore has no TIN, and that said instrument and TIN belong to
9 the James A. Stuart, Jr. Social Security Trust account."

03:25 10 So now he moves on. You know, we're done with wages I
11 received -- or the monies I received aren't wages, that the
12 employer I had is not a business -- a trade or business. You
13 know, that's not doing it for him. Obviously the Wisconsin Tax
14 Appeals Commission told him that's all frivolous, so he moves on
03:25 15 to something as a premise. He says there's two of me, there's
16 the James with not all caps and there's a James with all caps
17 and it's the Trust that's an artificial entity that I loaned my
18 consciousness to. And then he says, with that premise explain
19 to me what I'm supposed to do.

03:26 20 And as the judge will instruct you, when evaluating
21 someone's good faith beliefs, it's really a subjective
22 evaluation. Did the person really in good faith believe this?
23 Did he believe that he wasn't obligated to pay taxes? Did he
24 genuinely sincerely believe it? And that's a subjective
03:26 25 evaluation.

1 But you can look at objectively how outrageous the
2 claims are to determine if someone really did genuinely believe
3 it. Because I think your common experience would tell you, if
4 you go outside and you're dealing with someone who is
03:26 5 competent -- and that's the case here -- and someone just says
6 to you the sky is green. I'm telling you, the sky is green, as
7 passionately as they want to. But it's such an outrageous
8 claim, no matter how passionately, no matter how aggressively,
9 no matter how forcefully, no matter how much in rejection of all
03:26 10 else of science of anything else and they continue to say the
11 sky is green, but you know, your common sense, your common
12 experience tells you they don't really believe that because it's
13 outrageous. It's so objectionably unreasonable no competent,
14 reasonable person could genuinely believe it. They're just
03:27 15 arrogant, they're just bullying.

16 You remember Beverly Schlipp, his sister? And she
17 testified. You know, she didn't want to do this. And I think
18 there was even some reference to her husband. She didn't want
19 to sign the checks. And how did Mr. Stuart respond to that? He
03:27 20 just threatened her. He said I'm the majority owner, I own 70
21 percent, you don't sign them I'll fire you. He's a bully.

22 You know, his niece in accounting tries to help him,
23 brings him printed material that she's done research, the
24 woman's got a degree in accounting. She's brainwashed, she's
03:27 25 stupid. That's the kind of arrogance. You know, won't listen

1 to reason because it doesn't get him not to pay taxes.

2 So then you start with that premise. And then you
3 demand. He says I'm not in possession of a taxpayer
4 identification number or Social Security number and has loaned
03:28 5 his consciousness and physical capacity to and acts in the
6 capacity of.

7 And so with that as a faulty premise, no amount of
8 research or logic -- you know, if people won't listen, you
9 cannot convince them. And that's what's demonstrated here.
03:28 10 That's how you know this is not a good faith genuinely held
11 belief; this is just arrogance.

12 And you look on -- look on to Mr. Stuart's further
13 correspondence. He says he's confused. "Coupled with confusion
14 and incomprehensibility of the Internal Revenue Code." He says,
03:28 15 "As encouraged by the IRS, the Trust" -- the Trust. You know,
16 he's talking kinda like the third person. But in the third
17 person as the Trust -- "has sought advice from a reputable tax
18 practitioner, an attorney, and a payroll service. When the
19 Trust presented the understanding" -- "so again, when the Trust
03:28 20 presented the understanding of who the taxpayer was, it being
21 the Social Security numbered James A. Stuart, Jr. Trust--"

22 So he goes to professionals and he says, okay, you
23 understand, the taxpayer is this Trust which whom I've lent my
24 physical capacity and consciousness, "--and asked questions as
03:29 25 to whether they as professionals in their respective fields

1 understood the IRC, each of these entities declined to provide
2 advice."

3 Well, man bites dog. No surprise there. A guy walks
4 in the door and explains the theory under which he's loaned his
03:29 5 consciousness to an artificial entity that has a Social Security
6 number and accountants and lawyers and a payroll service don't
7 want to give advice. Again, because Mr. Stuart says you play by
8 my rules, you accept my premise or you're not competent. And
9 that's how he says in his further letters, I can't find
03:29 10 competent counsel because no one will agree with my premise.

11 You start reading his letters. And he talks about how
12 the Social Security Administration created a Social Security
13 account number which may serve as a taxpayer identification
14 number. But he says, "There's some" -- "The Trust's name had
03:30 15 some similarities to the man's name. One can never confuse the
16 Trust with the man and the Trust name is accompanied by its SSN.
17 The SSN also cannot be misconstrued as if it were the man's
18 number because God's law requires that his covenant children
19 cannot be numbered."

03:30 20 And again, as I've said, obviously maybe if it helps
21 him avoid paying taxes, but if he needs a driver's license he
22 has no problem using his Social Security number.

23 "No living being has ever been issued a SSN." Now
24 it's even broader. It's not even just him. He now says, "No
03:30 25 human being has ever been issued an SSN and most certainly is

1 not numbered. The human being who has loaned his consciousness
2 and physical capacity to, and acts within the Office of Trustee
3 for James A. Stuart, Jr. Trust, has no SSN."

4 He continues in his correspondence.

03:31 5 And again, you can tell it's sort of developing. Sort
6 of like the letter in the newspaper when he's talking about
7 gold. And he says, again -- let's go with just the last
8 sentence:

9 "Because the IRS owed the debt prior to the Trust
03:31 10 receiving the debt instrument, the IRS must first pay real money
11 to the Trust as a ratio of 21.95 Federal Reserve notes to every
12 one silver dollar, before the Trust can pay any tax on income
13 purportedly earned, because until this event occurs, no income
14 has been received."

03:31 15 So again, there's a new twist developing. And he's
16 kind of reformulating, restructuring his strategy here. And he
17 says, "The Trust is fully aware of the nature of the statutes
18 created by the United States Government, a corporation,
19 hereinafter referred to as the USG, and how these statutes have
03:32 20 been used since the bankruptcy of the United States was declared
21 in 1983."

22 THE COURT: Correction. Read that again. The last --
23 the number.

24 MR. JACOBS: "1938." I was gonna say I wasn't alive
03:32 25 then. I actually was alive in 1983, I was not alive in 1938.

1 And maybe some of you were. I don't recall ever reading about
2 the bankruptcy being declared of the United States in 1938. But
3 it fits into his alternate universe that he's pitching. You
4 know, he's trying to avoid paying taxes so he's going for broke.

03:32 5 "The Trust believes that at the time it was decided by
6 the bankers and USG not to inform the people of the United
7 States of America of the bankruptcy." This is why I have not
8 heard about it. "It was not made known to them the fact that
9 under bankruptcy, they had purportedly lost all of their
03:33 10 constitutional rights and were now under the jurisdiction to
11 have compelled performance to repay the debt to the bankers."

12 I don't know where he's going. But it's not -- it's
13 not a claim of mistake or confusion or, you know, the Internal
14 Revenue Code is really complicated. Where does it say I have to
03:33 15 file a return or where does it say this? It's not that. You
16 can tell his claims have gone well beyond that. It's I know
17 what the answers are; in fact, I'm not even listening to anybody
18 else who suggests contrary answers. And it's -- it's just
19 fanciful. It's a premise that doesn't allow for a response and
03:33 20 then gets angry and demands a response and tells the IRS it's on
21 thin ice because it can't respond because, of course, it's
22 impossible to respond to the arguments.

23 So the Judge will instruct you: "The term 'willfully'
24 means the voluntary and intentional violation of a known legal
03:34 25 duty." Mr. Stuart's prior history shows that he was aware of

1 his legal duty to do it. His actions in filing a false tax
2 return, in changing his status from a W-2 wage earner to a 1099,
3 to paying himself directly from the company - you know, it
4 really reflects that he knows he's wrong because if he really
03:34 5 believed it he wouldn't have to make any of these changes. But
6 he knows he's wrong so he's gotta take steps to avoid
7 withholding on the wages that are supposed to be withheld, to
8 avoid his income being reported to the Internal Revenue Service.
9 He knows he's wrong so he's gotta do things so the IRS doesn't
03:34 10 find out about his income so he doesn't have to pay taxes.

11 In other words, "Acting with a specific intent to
12 avoid paying a tax imposed by the income tax laws or to avoid
13 assessment of a tax that it was the legal duty of the defendant
14 to pay to the government, and that the defendant knew that it
03:34 15 was his legal duty to pay."

16 And again, his prior history. His efforts alone
17 demonstrate that he's doing it intentionally. His decision not
18 even to file tax returns at all after 2005 until the present
19 time.

03:35 20 And the Court will instruct you that in a case like
21 this that good faith can be a defense under some circumstances.
22 I mean, it's always a defense if you can satisfy it. That is,
23 "A defendant does not act willfully if he believes in good faith
24 that he is acting within the law, or that his actions comply
03:35 25 with the law. Therefore, if the defendant actually believed

1 that what he was doing was in accord with the tax statutes, he
2 cannot be said to have had the criminal intent to willfully
3 evade taxes. This is so even if the defendant's belief was not
4 objectively reasonable, as long as he held the belief in good
03:35 5 faith. However, you may consider the reasonableness of the
6 defendant's belief together with all the other evidence in the
7 case in determining whether the defendant held the belief in
8 good faith."

9 And that's what it tells you. Because anyone can
03:35 10 stand there and adamantly declare the sky is green. But to the
11 extent it is objectively unreasonable, that's some evidence that
12 he cannot genuinely hold it; it's just to his advantage to
13 assert it.

14 And the Court will further instruct you:

03:36 15 "A person's opinion that the tax laws violate his
16 constitutional rights does not constitute a good faith
17 misunderstanding of the law. Furthermore, a person's
18 disagreement with the government's tax collection systems and
19 policies does not constitute a good faith misunderstanding of
03:36 20 the law."

21 So, when we review the evidence, what the evidence
22 shows, it shows that the defendant had a history of filing,
23 reporting his income, paying taxes. He obviously wasn't happy
24 about it. He advised his accountant to be creative. He advised
03:36 25 him to take any deductions, he would take his chances with an

03:37 1 audit. Perhaps Mr. Walsh wasn't the aggressive, creative type
2 of accountant Mr. Stuart wanted, so he moved on to simply
3 declaring his wages weren't income; that his employer wasn't a
4 trade or business; that he wasn't a U.S. citizen; that the IRS
5 didn't have jurisdiction over him; that there was a trust that
6 actually was -- he had loaned his consciousness to that actually
7 was receiving the income.

03:37 8 And he did that despite being told repeatedly by
9 relatives, by long-time friends, by very experienced, educated
10 accountants, by numerous accountants, by the Wisconsin Tax
11 Appeals Commission. And his response was, I think he told his
12 sister Beverly Schlipp, "If the IRS sends correspondence don't
13 open it, send it back to them." Again, that's not someone who
14 is confused and wants information, that's someone who, again,
03:38 15 has staked out their position. They've decided that they're not
16 gonna listen, they're going to have it their way, and that no
17 matter all the educated, trained, experienced people, we're
18 going to reject them. And he's going to advise other people,
19 "Don't listen to lawyers and accountants, they're in on it too."

03:38 20 When you look at that evidence, it establishes --

21 Just scroll forward.

22 And again, obviously the tax due for each of the
23 years --

03:38 24 Scroll one more. I guess I didn't have them in order
25 very well. I'm sorry.

1 But you look at the evidence. It establishes that for
2 the years 2005, 2006 and 2007 Mr. Stuart had an income tax
3 obligation to the United States for each of those years; that he
4 attempted to evade his responsibility, a known responsibility
03:38 5 for those taxes; and that he committed affirmative acts: filing
6 false tax returns, changing his employment status, changing
7 being paid through a payroll service to being paid through
8 checks from his company, and then having those checks issued
9 under a different name than his own. That he took those
03:39 10 affirmative steps to willfully evade his income taxes. And that
11 he acted willfully. And not in some good faith misunderstanding
12 or confusion about what the law is, but in a selfish, arrogant
13 I'm right/you're wrong. And that that evidence establishes that
14 Mr. Stuart is, in fact, guilty of each of the three counts with
03:39 15 which he's been charged, and your verdict should reflect that
16 finding.

17 Thank you.

18 THE COURT: We will take a break at this time.

19 THE BAILIFF: All rise.

03:39 20 (Jury out at 3:39 p.m.)

21 THE COURT: Please be seated.

22 CONTINUED JURY INSTRUCTION CONFERENCE

23 THE COURT: As I listened to the arguments, it
24 appeared to me that it may be appropriate to add an additional
03:40 25 instruction, Pattern Instruction 3.07, which reads:

1 "You have heard a witness or witnesses give opinions
2 about matters requiring special knowledge or skill. You should
3 judge this testimony in the same way that you judge the
4 testimony of any other witness. The fact that such a person has
03:41 5 given an opinion does not mean that you are required to accept
6 it. Give the testimony whatever weight you think it deserves
7 considering the reasons given for the opinion, the witness's
8 qualifications and all of the other evidence in the case."

9 Your comments are invited.

03:41 10 MR. JACOBS: The instruction is fine with me, Your
11 Honor. I didn't -- I don't think I requested it but it's fine
12 with me.

13 MR. BERNHOFT: Defense agrees.

14 THE COURT: All right. What I will do is collect the
03:41 15 instructions that are in the jury box so that they can be
16 revised in accordance with our discussion. I ordinarily have
17 these in the hands of the jurors but rather than delay matters
18 while these are being revised I will -- or if they can be done
19 by the time I read the instructions fine, but otherwise we'll
03:42 20 hand them to the jurors after they go into the jury room to
21 deliberate. All right?

22 We'll give you a short break and then we'll proceed.

23 THE BAILIFF: All rise.

24 (Recess taken at 3:42 p.m., until 4:12 p.m.)

04:12 25 THE COURT: Are you ready to proceed?

1 MR. BERNHOFT: Yes.

2 THE COURT: They're finishing up the exhibits.

3 THE BAILIFF: All rise.

4 (Jury in at 4:14 p.m.)

04:15 5 THE COURT: Be seated, please. Counsel, you may
6 continue.

7 MR. BERNHOFT: Thank you, Judge.

8 DEFENDANT CLOSING ARGUMENT

9 MR. BERNHOFT: Your Honor, Mr. Jacobs, Mr. Rech,
04:15 10 ladies and gentlemen of the jury:

11 This is my final opportunity to speak with all of you
12 about the testimony and evidence in this case prior to the Court
13 instructing you on the law and you retire to the jury room to
14 continue this discussion amongst yourselves and to deliberate on
04:16 15 the fate of Mr. Stuart.

16 Now, the prosecution will have the last word after I'm
17 finished, and Mr. Jacobs will be able to make a rebuttal
18 argument. So with the utmost respect I'd ask you to pay careful
19 attention to what we discuss now, and keep that close to mind
04:16 20 during Mr. Jacobs' rebuttal argument because again this is my,
21 again, last opportunity to speak with you.

22 You'll recall I had the privilege of speaking with you
23 all at the very beginning of the case in opening statement. And
24 I surveyed what my best view of the testimony and evidence that
04:16 25 would come out in this trial and I made certain representations

1 about what the testimony and evidence would show. And I think
2 as we move forward you'll see that those good faith estimates,
3 or informed opinions about what the testimony and evidence would
4 show, matched up quite well with what actually came out here
04:17 5 during the trial testimony and in the documents.

6 As I mentioned during opening statement, some of the
7 most important evidence in this case is Mr. Stuart's letters to
8 the IRS. And I represented to you that all of these letters
9 would come in, and that Mr. Stuart made certain important
04:17 10 statements in his letters to IRS and, in fact, he did.

11 Now, Mr. Stuart told the IRS that he stood ready to
12 pay any tax and file any form the law required him to. He told
13 the IRS he couldn't find the code section in the Internal
14 Revenue Code that made him liable for the tax, and if he was
04:17 15 wrong about that to show him where he was wrong, to show him the
16 law. That's a reasonable position. It's a reasonable position
17 because I think every American would be entitled to know that,
18 and every American taxpayer is entitled to know what section of
19 the code makes them liable for the tax and what law requires
04:18 20 them to file the Form 1040.

21 Now, Kristy Morgan, you'll recall Ms. Morgan was the
22 IRS witness from Ogden, Utah, the Service Center there, the
23 Frivolous Correspondence Unit, she testified that the IRS
24 doesn't discuss tax law. I mean, if that's true perhaps they
04:18 25 should.

1 Ms. Morgan testified that it cost a lot of money to
2 answer those pesky taxpayer letters. Even if that's true, I
3 don't think it would have been very difficult for IRS to draft
4 one of those form letters and simply identify the code section
04:18 5 that imposes the liability, the law that requires the filing of
6 a 1040, and the code section that subjects the money that
7 Mr. Stuart made from New Age Chemical to withholding taxes.
8 They can do that in a form letter. In all events that didn't
9 happen.

04:19 10 Now, the other thing is this issue of frivolity. And
11 I would submit that rather than calling Mr. Stuart frivolous and
12 that they weren't going to talk to him anymore, they could have
13 just simply showed him the law. And then that burden would have
14 fallen to Mr. Stuart to respond accordingly. I believe the
04:19 15 testimony in this case shows that he was very sincere in his
16 beliefs, and that he would have responded appropriately based on
17 the statements of compliance, if you will, that he made in his
18 letters.

19 I believe the testimony and evidence shows that
04:19 20 Mr. Stuart was serious about this, that he was a serious man.
21 By all accounts and from the testimony and evidence he's an
22 intelligent man, and he was having a serious engagement with IRS
23 over fundamentally important issues.

24 The other thing Mr. Stuart told the IRS, very
04:19 25 importantly, is that he wasn't questioning the legality of the

1 Internal Revenue Code. I made that representation in opening
2 statement, and indeed we cited to the letter that showed where
3 Mr. Stuart said exactly that. I'm not questioning the legality
4 of the Internal Revenue Code. I do not want to be
04:20 5 misunderstood. I'm questioning the IRS's interpretation of the
6 code as it applies to me. And he was very clear about that in
7 his letters.

8 In not one single letter does Mr. Stuart say that the
9 Internal Revenue Code is unconstitutional or violates his
04:20 10 constitutional rights. Not one single letter with any such
11 statement. He does in a couple of letters cite to the
12 Constitution for what he believes is his constitutional right
13 for an answer from IRS, and that's very clear in the letters,
14 but not one place in one single letter does he say, boy, you
04:20 15 know, the Internal Revenue Code is unconstitutional, the tax
16 laws are constitutional, I have a problem with that. And he
17 never -- there's not one single letter where he says that the
18 Internal Revenue Code is illegal. It's not there.

19 Now, importantly, when asked to interpret Mr. Stuart's
04:21 20 beliefs -- and that's what these witnesses were doing, they were
21 trying to interpret Mr. Stuart's beliefs -- several witnesses
22 trying to recall conversations from many years ago testified
23 that they thought they recalled that Mr. Stuart believed that
24 the tax laws were unconstitutional, but that's not what his
04:21 25 letters say. And I submit to you that Mr. Stuart's letters are

1 the best evidence of what he was doing and thinking during those
2 time periods. These letters form snapshots in time. They are
3 not subject to -- or colored by the passage of time and fading
4 memories. They're also not colored by personal bias or other
04:21 5 motive. The letters stand for themselves.

6 Now, you heard testimony from Beverly Schlipp, and
7 this is Mr. Stuart's sister and Beverly's daughter Allison Reese
8 who is Mr. Stuart's niece. And that was some interesting
9 testimony. I think it's fair to say that there's a bit of a
04:22 10 family feud going on here. And family feuds are never pretty,
11 and they're not fun.

12 Now, we can all certainly appreciate Ms. Schlipp's and
13 Ms. Reese's concern that Mr. Stuart's beliefs and actions might
14 harm the company. After all, Ms. Schlipp was gainfully employed
04:22 15 with New Age, owns 30 percent of the company, et cetera. And we
16 can understand that. But there's obviously also some company
17 control issues going on here, and I'd like you to consider that
18 and think about that when you put their testimony in context and
19 when you weigh their testimony. By the way, Beverly Schlipp's
04:22 20 30 percent interest in New Age will one day pass to her daughter
21 Allison Reese. Again, these family feud things aren't fun, they
22 are never pretty, and there's other issues going on here that I
23 think you should consider.

24 But at the end of the day, regarding their testimony
04:23 25 and some of the animosity that you heard, the evidence showed

1 that Mr. Stuart treated Beverly pretty doggone well. Provided
2 gainful employment at New Age Chemical for over 23 years, even
3 though the mere fact that she had a minority interest didn't
4 entitle her to work there. She wasn't entitled to work at New
04:23 5 Age Chemical. She wasn't entitled to receive a salary check in
6 addition to her 30 percent profit K-1s. And also Mr. Stuart
7 gainfully employed Richard Schlipp. And so for the Schlipps for
8 some period of time they had an aggregate family income of over
9 \$100,000.

04:23 10 So, some of that testimony was a little bit nasty.
11 But I think the evidence shows that at the end of the day
12 Mr. Stuart treated Beverly Schlipp fairly well considering that
13 he didn't have to ever hire her or pay her anything. But the
14 passage of time, and perhaps other motives, does tend to color
04:24 15 testimony.

16 You'll also recall that I let you know -- or I
17 previewed in opening statement that several CPAs would testify
18 in this case, and they did. And that was CPAs Walsh, Patrick
19 Walsh, Dan Hau and Joel Nettesheim. And they testified here.
04:24 20 And you'll recall I mentioned that you might be surprised that
21 at these CPAs' testimony and I think you were. I was a little
22 bit surprised about certain portions of their testimony as well.

23 But, in fact, not one of these CPAs, or Allison Reese
24 for that matter, ever advised Mr. Stuart what law made him
04:24 25 liable for the income tax, what law required him to file the

1 1040 form, and what code section subjected the money he made to
2 withholding. In fact, not one of them knew the law. Not one of
3 them knew the code section that imposes the tax liability,
4 requires the filing of a 1040, or subjects money someone makes
04:25 5 to withholding taxes. There was a combined CPA experience up
6 here approaching 80, 90 years. And they seemed to be very
7 competent, fine professional men. I have no truck with them or
8 their testimony. But the fact is, not one of them could cite
9 the code section that imposed the liability that required the
04:25 10 filing of the form.

11 Now, the Court will instruct you on the prosecution's
12 burden to prove to you beyond all reasonable doubt that
13 Mr. Stuart acted willfully. The Court will instruct you that to
14 act willfully, Mr. Stuart must have intentionally violated a
04:25 15 known legal duty. I'm just gonna step over to the Elmo here
16 real quick, and we're going to put this on the board for you.

17 Now, this is a copy of the actual jury instruction
18 page that you'll receive on the willfulness instruction. And
19 I'm going to read that for you and you can follow along.

04:26 20 "Definition of willfully. The term 'willfully' means
21 the voluntary and intentional violation of a known legal duty;
22 in other words, acting with the specific intent to avoid paying
23 a tax imposed by the income tax laws or to avoid assessment of a
24 tax that it was the legal duty of the defendant to pay to the
04:26 25 government, and that the defendant knew it was his legal duty to

1 pay."

2 And I'm not exactly certain how Mr. Stuart was
3 supposed to know that he had a specific legal duty to pay the
4 tax and file the form when his CPAs didn't know what the law
04:27 5 was. Because legal duties arise from law, not from a 40-year
6 accountant saying, you know, Jim, if you persist in this bad
7 things will happen to you. That's not law. That's a statement
8 of raw power. In America we're governed by law.

9 All these CPAs could tell him to do -- would -- could
04:27 10 tell him about what he was doing and his beliefs was that bad
11 things would happen and he should file the form and pay the tax.

12 The funny thing about that is, the more the CPAs
13 couldn't tell him what the law was the more Mr. Stuart believed
14 it. And that affects someone psychology. If you're kinda
04:28 15 thinking that there's something funny about something and you
16 start asking questions and your CPA professionals can't tell you
17 what the law is, you start to believe it more. And this is the
18 evolution of Mr. Stuart's thinking. And as I mentioned in
19 opening statement, you are called upon to look into his heart
04:28 20 and mind and judge him, and judge the evolution of his thinking
21 and his experience. It's a very difficult thing to do, but it's
22 your charge.

23 Now, the prosecution's own evidence showed, along with
24 the CPA testimony, that there was no concealment on the New Age
04:28 25 books and records. All the money Mr. Stuart made, whether it

1 was W-2 income, draw checks, operating account checks was
2 faithfully recorded by Beverly Schlipp in the New Age books and
3 records. Now, I have to ask you something, we talked a bit
4 about this in opening statement. Use your common experience, is
04:29 5 this what a tax cheat does? That if all Mr. Stuart was about
6 was cheating the IRS out of money, he didn't have to do that.
7 There was many other smarter and simpler ways to try and cheat
8 the government. He didn't need to pay his pesky sister to keep
9 the books and records. He could have hung out in the back
04:29 10 office at New Age Chemical and he could have done whatever he
11 wanted to do. He didn't have to hire and pay her.

12 And the other thing is, Mr. Stuart didn't have to hire
13 all these CPAs. You know, he hires these CPAs, Mr. Nettesheim
14 from Suby Von Haden, a very respectable accounting firm, he's
04:29 15 still providing accounting work for New Age Chemical, and
16 Mr. Stuart doesn't have to do that. If he wanted to be a tax
17 cheat, he'd sit in the back room and he wouldn't have any books
18 and records. And he certainly wouldn't show in the books and
19 records all of the things he was doing.

04:30 20 And, you know, again by all accounts Mr. Stuart is an
21 intelligent man. I mean, he knew these letters, for example, to
22 Payroll Data Service are available. These are public letters.
23 I mean, it's an odd way to commit affirmative acts of tax fraud,
24 to write letters to people and tell them what your views are in
04:30 25 a public forum. And then he writes a letter to the editor

1 opinion in the Lake County newspaper for anybody who picks up
2 the newspaper and wants to read it. I mean, if that's a tax
3 conspiracy it's a conspiracy of full disclosure. It's not the
4 actions of a tax evader.

04:30 5 Well, and just to double back a little bit. It goes
6 without saying that a tax evader doesn't write a bunch of
7 letters to the IRS and say here I am. He writes a letter to the
8 Secretary of Treasury. Writes a letter to then IRS Commissioner
9 Evenson. Announces his very unconventional views and beliefs.

04:31 10 Asks for the law. I mean, talk about putting a target on your
11 back. I mean, he was -- you know, that was an invitation for
12 IRS enforcement. And I believe it's evidence of the sincerity
13 of his belief. If you don't care about something you wouldn't
14 take those risks. The fact of his engagement with IRS is

04:31 15 powerful evidence of his sincerity. People don't do those sorts
16 of things, not people I know. In my entire life experience I
17 have not met people that would want to engage at that level.
18 And again, if the whole motive here was to cheat the government
19 out of some money, boy, there were about 150 smarter ways to do
04:31 20 that.

21 So, going back to the CPAs, Mr. Stuart writes the
22 letters to the IRS. Unresponsive. There's a code section,
23 couple code sections on government 40, Exhibit 40. Mr. Jacobs
24 referenced that in his initial closing argument. You can look
04:32 25 at that. Those aren't the sections -- they don't purport to be

1 the code sections that make a man or woman liable for the income
2 tax. You can look at it for yourself. And it's certainly no
3 code sections there mandating the filing of a 1040.

4 So, you can't get answers from IRS. He engages CPAs.
04:32 5 In an animated discussion and by all accounts, particularly from
6 Mr. Nettesheim's testimony, Mr. Stuart was serious. These were
7 serious discussions. This wasn't a joke. I can think of a
8 million other ways to have fun. Mr. Stuart was serious about
9 this.

04:32 10 So, the CPAs don't give him answers. Turns out they
11 don't know the answers. And this changes Mr. Stuart. And it
12 changes the tone and the content of his letters. And you see it
13 in the letters.

14 It's clear that he performs additional research, and
04:33 15 frankly he delves down deep into some very, very complicated
16 legal theories and areas. I'm not going to opine on the legal
17 nature of the specific law regarding these areas but, you know,
18 there's real law there. This is federal jurisdiction. We're
19 talking about estates and trusts and artificial entities. Style
04:33 20 manuals on the meaning, the legal meaning of all-caps
21 designations. Citizenship which is a very complicated area of
22 law. Goes back to Grotius eight, nine hundred years ago,
23 international law, public and private. That's some pretty dense
24 stuff.

04:33 25 And why is he doing that? He's doing that because the

1 system he's trying to engage is not giving him answers. And so
2 he figures I have to have a different way of communicating. He
3 also declares his status. I mean, at the end of the day if the
4 system you're trying to engage or the person you're trying to
04:34 5 engage is not responsive to you, is not taking you seriously,
6 and you believe that that's the case, you try and figure out a
7 different way to communicate with them. And so Mr. Stuart
8 declares his status as a Wisconsin national.

9 You know, all this stuff is easy to mock. It's easy
04:34 10 to be snarky about all this stuff. But I don't have pretended
11 to have walked a mile in Jim Stuart's shoes. But you're called
12 upon to figure out what that's like. Easy to mock. Easy to
13 make fun.

14 You know, in talking about beliefs, I think there was
04:34 15 a guy named Copernicus who had the audacity to think and suggest
16 that the world was round instead of flat.

17 In talking about federal case law and cases, just
18 because a court says, hey, you know, you're wrong about the law,
19 that doesn't mean you're a bad person. That doesn't mean you
04:34 20 have criminal intent. I don't want to be trite but, I mean,
21 slavery was legal in this country for about 150-200 years, and
22 there were people who said that's wrong. Just because a court
23 interprets your legal position and says, ah, under today's
24 controlling authority there's no support for that, that doesn't
04:35 25 make you a person with bad intent if you want to continue to

1 believe the things that you believe. That does not condemn you.
2 And thank goodness it doesn't.

3 And, you know, the prosecution focused heavily on the
4 most unconventional letters. I understand that. We're
04:35 5 advocates. We've got a job to do. But I don't know how
6 relevant all that is. As we discussed in opening statement,
7 you're not called upon to determine whether Mr. Stuart was right
8 about his beliefs, you're not called upon to approve of him
9 holding the beliefs, you're not called upon to determine whether
04:36 10 you'd have done it that way or that was stupid. And frankly,
11 you're not called upon to determine whether he's right or wrong
12 or otherwise. But you are called upon, based on the oath you've
13 all taken, to put aside your personal feelings regarding both
14 Mr. Stuart and any aversion you might have for his beliefs. And
04:36 15 that's a tough call. That's a rough go. But you have to.
16 Frankly, I imagine that many of you were put off by some of the
17 more esoteric writings and memos that Mr. Stuart wrote.
18 Probably more than a little put off in certain cases. But as I
19 said in opening statement, crazy ain't criminal. All you gotta
04:36 20 do is turn on the television and watch the news. I mean, if
21 crazy were criminal half the country would be in federal prison.
22 Crazy ain't criminal.

23 Now, as we discussed in opening statement, you're
24 charged with determining whether Mr. Stuart sincerely believed
04:36 25 what he says he did. And I advised you and suggested to you in

1 opening statement that that formed the core issue of this case.
2 And I think it's clear that it does. Because we don't dispute
3 that Mr. Stuart filed the 1040X returns. We don't dispute as a
4 matter of law that he had income tax liability. That's why
04:37 5 there was virtually no questions for any of those witnesses.
6 That's not in dispute. Dozens and perhaps more than 100
7 document were stipulated to. We're not disputing the evidence
8 here in terms of that. The real meat and potatoes of this case
9 is to determine whether Mr. Stuart sincerely believes what he
04:37 10 says he believed.

11 Another thing, you know, in addition to what I believe
12 is a fair good mountain of evidence showing the sincerity of
13 Mr. Stuart's beliefs, and I've surveyed a lot of that just now,
14 not one single witness testified that Mr. Stuart wasn't sincere.
04:37 15 Not one. You heard that Mr. Stuart was adamant about his
16 beliefs. You heard that Mr. Stuart was passionate about his
17 beliefs. You heard some other testimony that, you know, he
18 wasn't a good listener. But not one single witness testified
19 that they thought that this was some sort of a joke; that
04:38 20 Mr. Stuart didn't actually passionately believe what he says he
21 believed. Not one witness.

22 And you heard from CPA Nettesheim. And he's still
23 doing -- Jim Stuart still pays CPA Nettesheim to do accounting
24 for New Age Chemical. And CPA Nettesheim testified that he
04:38 25 never doubted Mr. Stuart's sincerity. In spite of the fact that

1 Mr. Nettesheim seemed to be kind of a little bemused by some of
2 Mr. Stuart's stated beliefs. I mean, he's a practicing tax
3 professional and he's a CPA. I'm sure he wasn't real excited
4 about having those discussions with Mr. Stuart, but he doesn't
04:38 5 have any dog in this hunt and I think you can credit his
6 testimony. Never doubted Jim Stuart's sincerity.

7 Thanks for your patience.

8 Excuse me one moment.

9 (Brief pause.)

04:39 10 MR. BERNHOFT: I wanted to remark on one thing in
11 terms of your charge and your duty. Make no mistake, that your
12 verdict here has no effect on the IRS's ability to collect
13 whatever taxes Mr. Stuart owes to the IRS after this case. This
14 is part of the deal that you're not being called upon to approve
04:39 15 of his beliefs or determine whether he's right. This is a
16 federal criminal trial, and you're called upon to determine
17 whether Mr. Stuart is a federal criminal with bad intent. The
18 IRS is going to have its day with Mr. Stuart after this trial
19 regarding his civil taxes.

04:40 20 That's a fair outline of what I had to say. I wanted
21 to thank each and every one of you for your attention.
22 Mr. Jacobs and I are trial lawyers, and I know I can speak for
23 him as well, and the Court, that you've been extremely
24 attentive, individually and collectively, and these disputes
04:40 25 between citizens like Mr. Stuart and the government and the

1 prosecution and the IRS don't get resolved unless good people
2 pay attention. And this stuff is important. I thank you for
3 it. I thank you for your commitment and your time and attention
4 here.

04:40 5 Now, after Mr. Jacobs completes his rebuttal
6 argument -- Mr. Jacobs is going to go next, he's going to say a
7 few words, and then you're going to retire to the jury room to
8 deliberate. And with utmost respect I ask you to return not
9 guilty verdicts across the board on these three tax evasion
04:41 10 counts.

11 Thank you very much for your time.

12 GOVERNMENT REBUTTAL ARGUMENT

13 MR. JACOBS: Mr. Bernhoft is correct that because I
14 represent the plaintiff in this case and that the burden is on
04:41 15 the plaintiff the United States to prove Mr. Stuart's guilt
16 beyond a reasonable doubt, I get to speak to you last. And
17 that's how it should be in our system, the criminal justice
18 system. We're obligated to prove the essential elements beyond
19 a reasonable doubt, and the evidence in this case did that.

04:41 20 There were a couple of remarks that Mr. Bernhoft made,
21 something about some family feud and nasty testimony. I think
22 he said that when Beverly Schlipp passes away her interest is
23 going to pass to Allison Reese. I don't know if that's true or
24 not, there's no evidence one way or the other that that's the
04:42 25 case, but if the suggestion is that she altered her testimony

1 because she's hoping that she's going to get her mother's
2 interest in the company, I'd like you to at least consider her
3 demeanor, her mother's demeanor when they testified, and whether
4 that's a fair assessment of Allison Reese and her motivations in
04:42 5 this case.

6 And he said something about -- Mr. Bernhoft said
7 something about Mr. Stuart didn't need to pay his pesty sister.
8 Again, you heard the testimony and saw the demeanor again.
9 Whether that assessment is called for, some suggestion that they
04:42 10 sculpted their testimony because of some family feud, I don't
11 believe the evidence supports that type of an inference.

12 Mr. Bernhoft said Mr. Stuart just kept saying show me
13 the law. Now, first of all, the letters are in evidence and you
14 can review them and review whether those letters reflect an
04:43 15 individual asking IRS to show him the law, or whether they
16 reflect an individual who says to the IRS I'll tell you what the
17 law is and you're gonna do things my way because he is
18 bull-headed, close-minded, and doesn't care what anyone who
19 happens to be experienced and educated about matters has to say.

04:43 20 I think a fairer read on that evidence is, like he
21 would have listened. You know, repeatedly a long-time family
22 friend, an accountant with 35 years of experience, who
23 Mr. Stuart's father had asked to help and advise the family, the
24 business, and work with Mr. Stuart's mother after his father
04:43 25 passed away, told him what he was doing was unlawful and

1 fraudulent, and he rejected it out of hand. His own niece,
2 who's got a degree in accounting, told him he was wrong and got
3 him material and he dismissed it and wouldn't look at it.

04:44 4 You know, is this someone who is looking, show me the
5 law? You know, who tells his sister "if the letters come from
6 the IRS don't open them, send them back." Writes "don't talk to
7 lawyers or accountants." Tells his niece she's brainwashed and
8 stupid. Is that someone who is looking for answers or is that
9 someone who has staked out a position and is going to fight it
04:44 10 to the end? I think Ms. Reese testified he said he wanted to be
11 a martyr.

12 And, yes, in his letters he repeatedly says "I'm not a
13 tax protester. I'm not questioning the law." You know, that's
14 convenient. That's a convenient thing to say, right? You just
04:44 15 keep saying, you know, I'm not robbing you, as you're stealing
16 someone's money. It's easy to say that. You look at someone's
17 actions. You don't judge them by their -- you surely shouldn't
18 judge Mr. Stuart by just his words, look at his actions. How
19 did he treat educated individuals.

04:45 20 You know, books are just analyses about topics, law,
21 written by people. So when people tell you things based on
22 their teaching -- their learning, their education and
23 experience, that's how you gain knowledge. And so Mr. Stuart's
24 outright just rejection of it, you know, demonstrates an
04:45 25 unwillingness to learn. He is close-minded. He doesn't care.

1 And that's what willfulness is. It's unlawful behavior in the
2 face of educated, knowledgeable people telling you what you're
3 doing is wrong. That's how you know it's not a good faith
4 belief.

04:45 5 You know, Mr. Bernhoft mentioned Mr. Nettesheim, and I
6 would say that a fair assessment of his situation is he decided
7 not to question Mr. Stuart's behavior and go along and try to
8 help Ms. Schlipp file the returns she knew she had to file and
9 try to get her K-1s and simply not to engage Mr. Stuart. We saw
04:46 10 what happened when people did engage him, right? They weren't
11 working with him anymore. Mr. Hau was terminated.

12 And Mr. Stuart says just because a court says you're
13 wrong doesn't make you a bad person. You know, you're not here
14 really to assess whether Mr. Stuart is a good or a bad person.
04:46 15 We're not -- the evidence isn't whether he's good or bad. The
16 question is whether when faced with authoritative determinations
17 of the law you just ignored it. So when the Wisconsin court --
18 the tax -- I'm sorry, the Tax Appeals Commission tells him his
19 positions are frivolous, I mean, that's what establishes the
04:47 20 law, our courts, and he still ignores it and still doesn't file
21 tax returns. That's how you know it's not a good faith belief.
22 You can't just say "I don't care what the courts say, I still
23 don't believe it" and allege that somehow that's a good faith
24 belief and what you're doing complies with the law because
04:47 25 they've told you what the law is. That's what courts do.

1 Again, it's not whether he's a good or a bad person.

2 And crazy ain't criminal. No, this isn't an issue of
3 crazy or I think he said kooky in opening. This isn't a
4 question of crazy or kooky. This is arrogance. This is
04:47 5 self-serving arrogance. He didn't want to pay taxes. We saw it
6 in those notes. You see what his motivation is. This is just
7 morphing into that. It's just a more aggressive version of
8 that.

9 And his closed-mindedness, his arrogance, his
04:47 10 unwilling to listen, his bullying of his sister, this is just
11 the same thing, he's just trying to bully everyone into his way
12 of thinking. Well, that's not how the law works.

13 Mr. Stuart was well informed of the law and made an
14 intentional decision to disregard it. And that, coupled with
04:48 15 the evidence, I gather, as Mr. Bernhoft said, there's no dispute
16 that he has income tax liability, establishes that Mr. Stuart
17 is, in fact, guilty of three counts of tax evasion as charged in
18 the indictment.

19 Thank you.

04:48 20 FINAL JURY INSTRUCTIONS

21 THE COURT: Members of the jury, you every seen and
22 heard all the evidence and the arguments of the attorneys. Now
23 I will instruct you on the law.

24 You have two duties as a jury. Your first duty is to
04:48 25 decide the facts from the evidence in the case. This is your

1 job, and yours alone.

2 Your second duty is to apply the law that I give you
3 to the facts. You must follow these instructions, even if you
4 disagree with them. Each of the instructions is important, and
04:49 5 you must follow all of them.

6 Perform these duties fairly and impartially.

7 And with batteries. These rechargeable batteries are
8 eight years old.

9 (Brief pause.)

04:50 10 THE COURT: Do not allow sympathy, prejudice, fear or
11 public opinion to influence you. You should not be influenced
12 by any person's race, color, religion, national ancestry, or
13 sex.

14 Nothing I say now, and nothing I said or did during
04:50 15 the trial, is meant to indicate any opinion on my part about
16 what the facts are or about what your verdict should be.

17 The evidence consists of the testimony of the
18 witnesses, the exhibits admitted in evidence, and stipulations.

19 A stipulation is an agreement between both sides that
04:50 20 certain facts are true or that a person would have given certain
21 testimony.

22 Certain things are not evidence. I will list them for
23 you:

24 First, testimony that I struck from the record, or
04:51 25 that I told you to disregard, is not evidence and must not be

1 considered.

2 Second, anything you may have seen or heard outside of
3 the courtroom is not evidence and must be entirely disregarded.
4 This includes any press, radio, or television reports you may
04:51 5 have seen or heard. Such reports are not evidence and your
6 verdict must not be influenced in any way by such publicity.

7 Third, questions and objections by the lawyers are not
8 evidence. Attorneys have a duty to object when they believe a
9 question is improper. You should not be influenced by any
04:51 10 objection or by my ruling on it.

11 Fourth, the lawyers' statements to you are not
12 evidence. The purpose of these statements is to discuss the
13 issues and the evidence.

14 Some of you have heard the phrases "circumstantial
04:52 15 evidence" and "direct evidence." Direct evidence is the
16 testimony of someone who claims to have personal knowledge of
17 the commission of the crime which has been charged, such as an
18 eyewitness. Circumstantial evidence is the proof of a series of
19 facts which tend to show whether the defendant is guilty or not
04:52 20 guilty. The law makes no distinction between the weight to be
21 given either direct or circumstantial evidence. You should
22 decide how much weight to give to any evidence. All of the
23 evidence in the case, including the circumstantial evidence,
24 should be considered by you in reaching your verdict.

04:53 25 You are to decide whether the testimony of each of the

1 witnesses is truthful and accurate, in part, in whole, or not at
2 all, as well as what weight, if any, you give to the testimony
3 of each witness.

4 In evaluating the testimony of any witness, you may
04:53 5 consider, among other things: the witness's intelligence; the
6 ability and opportunity the witness had to see, hear, or know
7 the things that the witness testified about; the witness's
8 memory; any interest, bias, or prejudice the witness may have;
9 the manner of the witness while testifying; and the
04:53 10 reasonableness of the witness's testimony in light of all of the
11 evidence in the case.

12 You should use common sense in weighing the evidence
13 and consider the weight in light of your own observations in
14 life.

04:53 15 In our lives, we often look at one fact and conclude
16 from it that another fact exists. In law we call this
17 "inference." A jury is allowed to make reasonable inferences.
18 Any inference you make must be reasonable and must be based on
19 the evidence in the case.

04:54 20 The indictment charges that the offense was committed
21 "on or about" a certain date. The government must prove that
22 the offense happened reasonably close to that date but is not
23 required to prove that the alleged offense happened on that
24 exact date.

04:54 25 It is proper for an attorney to interview any witness

1 in preparation for trial.

2 You may find the testimony of one witness or a few
3 witnesses more persuasive than the testimony of a larger number.
4 You need not accept the testimony of the larger number of
04:54 5 witnesses.

6 You've heard a witness give opinions about matters
7 requiring special knowledge or skill. You should judge this
8 testimony the same way that you judge the testimony of any other
9 witness. That a witness has given an opinion does not mean that
04:55 10 you are required to accept it. Give the testimony whatever
11 weight you think it deserves considering the reasons given for
12 the opinion, the witness's qualifications and all of the other
13 evidence in the case.

14 The defendant has an absolute right not to testify.
04:55 15 The fact that the defendant did not testify should not be
16 considered by you in any way in arriving at your verdict.

17 The indictment in this case is the formal method of
18 accusing the defendant of an offense and placing the defendant
19 on trial. It is not evidence against the defendant and does not
04:55 20 create any inference of guilt.

21 The grand jury charges:

22 Allegations common to all counts.

23 1. At all times relevant to this indictment:

24 James A. Stuart, Jr., Stuart, was a resident of

04:56 25 Hartland, Wisconsin, which is in the state and Eastern District

1 have of Wisconsin.

2 B. Stuart was employed by and the majority owner of
3 New Age Chemical, Incorporated, New Age Chemical.

4 New Age Chemical was a Wisconsin corporation with its
04:56 5 principal place of business located in Delafield, Wisconsin,
6 which is in the State and Eastern District of Wisconsin.

7 D. Stuart received income from New Age Chemical both
8 in the form of compensation and distributions.

9 2. Stuart willfully attempted to evade and defeat the
04:56 10 assessment and payment of the federal income taxes he owed to
11 the United States for each of the years 2005 through 2007 by
12 concealing and attempting to conceal from all proper officers of
13 the United States his true and correct income, and by the
14 following acts:

04:56 15 A. In September 2005, Stuart changed his employment
16 status at New Age Chemical from an employee, from whose wages
17 income taxes had been withheld, to an independent contractor.
18 As a result, income taxes were no longer withheld from
19 compensation payments New Age Chemical made to Stuart.

04:57 20 B. In April 2006, Stuart directed New Age Chemical to
21 stop paying compensation to him through a parole service and to
22 issue compensation checks to him directly and not to withhold
23 income taxes from such payments. The parole service used by New
24 Age Chemical had issued Forms W-2 wage and tax statements, when
04:57 25 Stuart was paid as an employee, and Forms 1099, miscellaneous

1 income statements, when Stuart was paid as an independent
2 contractor, reflecting New Age Chemical's payments to Stuart.

3 C. In August 2007, Stuart directed New Age Chemical
4 to issue compensation checks to him payable to New Age
04:58 5 Chemical, Ltd. Drawing Account.

6 D. In August 2007, Stuart opened a bank account in
7 the name of New Age Chemical, Ltd. Drawing Account for the
8 benefit of the Delafield Trust, into which he deposited checks
9 he received from New Age Chemical.

04:58 10 E. Stuart submitted documents to the IRS falsely
11 indicating that he had no wages, no income, and no tax
12 liabilities for the years 2005 through 2007.

13 Count two.

14 The grand jury further charges that:

04:58 15 On or about April 17, 2006, in the State and Eastern
16 District of Wisconsin, and elsewhere, James A. Stuart Jr. did
17 willfully and knowingly attempt to evade and defeat a large part
18 of the income tax due and owing by him to the United States of
19 America for the calendar year 2005, by the affirmative acts
04:59 20 described above in paragraph 2 of this indictment and by
21 preparing and causing the preparation of a false and fraudulent
22 2005 U.S. Individual Income Tax Return, Form 1040, for himself,
23 which return the defendant filed with the Internal Revenue
24 Service wherein it was stated that he had taxable income for
04:59 25 said calendar year of zero dollars and that the amount of total

1 tax due and owing thereon was zero dollars, whereas, as Stuart
2 then and there well knew and believed, he had taxable income for
3 2005 substantially greater than the amount reported and that, as
4 a result, the actual amount of income tax due and owing to the
05:00 5 United States of America by the defendant for 2005 was
6 substantially greater than the amount reported.

7 All in violation of Title 26, United States Code,
8 Section 7201.

9 Counts two and three.

05:00 10 The grand jury further charges:

11 For the calendar years 2006 and 2007, in the State and
12 Eastern District of Wisconsin and elsewhere, James A. Stuart,
13 Jr. had and received taxable income in the approximate amounts
14 indicated below, upon which there was owing to the United States
05:00 15 of America income taxes, including self-employment taxes, in the
16 amounts indicated. Knowing and believing the foregoing facts,
17 Stuart did willfully attempt to evade and defeat the income tax
18 due and owing by him to the United States of America for the
19 calendar years 2006 and 2007 by failing to file with the
05:01 20 Internal Revenue Service a federal income tax return for these
21 years on the date indicated, as required by law, by failing to
22 pay said income taxes due to the Internal Revenue Service; and
23 by the affirmative acts described above in paragraph 2 of this
24 indictment.

05:01 25 Count two. Column 1.

1 Two. Tax year, 2006.
2 Taxable income, column 3, \$235,130.
3 Column 4, income tax due, \$68,921.
4 Column 5, tax return due date, April 16, 2007.
05:02 5 Count three.
6 Column 2, 2007.
7 Column 3, \$400,912.
8 Column 4, \$126,422, income tax due.
9 Tax return date, April 15, 2008.

05:02 10 All in violation of Title 26, United States Code,
11 Section 7201.

12 The defendant is presumed to be innocent of each of
13 the charges. This presumption continues during every stage of
14 the trial and your deliberations on the verdict. It is not
05:02 15 overcome unless from all the evidence in the case you are
16 convinced beyond a reasonable doubt that the defendant is guilty
17 as charged. The government has the burden of proving the
18 defendant -- let me repeat. The government has the burden of
19 proving the guilt of the defendant beyond a reasonable doubt.

05:03 20 This burden of proof stays with the government
21 throughout the case. The defendant is never required to prove
22 his innocence or to produce any evidence at all.

23 If any reference by the court or by counsel to matters
24 of evidence does not coincide with your recollection, it is your
05:03 25 recollection which should control during your deliberations.

1 The indictment charges the defendant with three counts
2 of violating Title 26, United States Code, Section 7201, which
3 is commonly referred to as tax evasion. These charges concern
4 the defendant's federal income taxes for the years 2005, 2006,
05:04 5 and 2007.

6 Section 7201 of the Internal Revenue Code, 26 U.S.C.,
7 provides that, quote, "any person who willfully attempts in any
8 manner to evade or defeat any tax imposed by," paren, "the
9 Internal Revenue Code," "or by" -- "or" -- repeat -- "or the
05:04 10 payment thereof," end of quote, shall be guilty of an offense
11 against the United States.

12 To sustain a charge of tax evasion as charged in the
13 indictment, the government must prove the following
14 propositions:

05:04 15 First, on April 15, or date of a legal extension, of
16 the year following the tax year, federal income tax was due and
17 owing by the defendant.

18 Second, the defendant intended to evade or defeat the
19 ascertainment, assessment, computation or payment of the tax;
05:05 20 and

21 Third, the defendant willfully did some act in
22 furtherance of the intent to evade tax or payment of the tax.

23 If you find from your consideration of all of the
24 evidence that each of these propositions has been proved beyond
05:05 25 a reasonable doubt, then you should find the defendant guilty.

1 If, on the other hand, you find from your
2 consideration of all the evidence that any of these propositions
3 has not been proved beyond a reasonable doubt, then you should
4 find the defendant not guilty.

05:06 5 The term "willfully" means the voluntary and
6 intentional violation of a known legal duty; in other words,
7 acting with the specific intent to avoid paying a tax imposed by
8 the income tax laws or to avoid assessment of a tax that it was
9 the legal duty of the defendant to pay to the government, and
05:06 10 that the defendant knew it was his legal duty to pay.

11 When the phrase "the defendant knew" is used in these
12 instructions, it means that the defendant realized what he was
13 doing and was aware of the nature of his conduct, and did not
14 act through ignorance, mistake or accident. Knowledge may be
05:07 15 proved by the defendant's conduct, and by all of the facts and
16 circumstances surrounding the case.

17 A defendant does not act willfully if he believes in
18 good faith that he is acting within the law, or that his actions
19 comply with the law. Therefore, if the defendant actually
05:07 20 believed that what he was doing was in accord with the tax
21 statutes, he cannot be said to have had the criminal intent to
22 willfully evade taxes. This is so even if the defendant's
23 belief was not objectively reasonable, as long as he held the
24 belief in good faith. However, you may consider the
05:07 25 reasonableness of the defendant's belief together with all the

1 other evidence in the case in determining whether the defendant
2 held the belief in good faith.

3 A person's opinion that the tax laws violate his
4 constitutional rights does not constitute a good faith
05:08 5 misunderstanding of the law. Furthermore, a person's
6 disagreement with the government's tax collection systems and
7 policies does not constitute a good faith misunderstanding of
8 the law.

9 You have heard evidence of acts of the defendant other
05:08 10 than those charged in the indictment. You may consider this
11 evidence only on the question of defendant's knowledge, intent,
12 and absence of mistake. You should consider this evidence only
13 for these limited purposes.

14 If you find beyond a reasonable doubt that the
05:08 15 defendant had a tax liability for a particular year, then I
16 instruct you as a matter of law, that tax was due and owing on
17 April 15, or other date set by law or legal extension, of the
18 following year.

19 If the defendant has incurred a tax liability, it
05:09 20 exists from the date the return is due. A taxpayer's tax
21 liability exists independent of any administrative assessment.
22 It is not necessary that a taxpayer receive a tax assessment
23 before he is charged with a criminal violation of willful
24 attempt to evade or defeat income tax.

05:09 25 Failure to file a tax return, without any additional

1 act, does not establish the crime of willful attempt to evade or
2 defeat income tax.

3 The indictment alleges that the defendant committed
4 certain specific acts in furtherance of his intent to evade and
05:09 5 defeat the assessment and computation of his tax for the years
6 2005, 2006, and 2007. The government need not prove that each
7 and every specific alleged act was committed by the defendant.
8 However, the government must prove that the defendant committed
9 at least one of the specific acts which was alleged in that
05:10 10 count. In order to find that the government has proved the
11 defendant committed a specific act, the jury must unanimously
12 agree on which specific act that the defendant committed.

13 It is not necessary for the United States to prove
14 everything alleged in count one of the indictment. It is only
05:11 15 necessary to prove so much as establishes the elements of the
16 offense charged in each count.

17 The three counts of the indictment charge the
18 defendant with having committed separate offenses.

19 Each count and the evidence relating to it should be
05:11 20 considered separately, and a separate verdict should be returned
21 as to each count. Your verdict of guilty or not guilty of an
22 offense charged in count one should not control your decision as
23 to the other counts. The defendant is not on trial for any act
24 or conduct not alleged in the indictment.

05:11 25 The punishment provided by law for the offenses

1 charged in the indictment is a matter exclusively within the
2 province of the court and should not be considered by you in any
3 way in arriving at your verdict.

4 During your deliberations, you must not communicate
05:12 5 with or provide any information to anyone by any means about
6 this case. You may not use any electronic device or media, such
7 as telephones, cell phone, smart phone, iPhone, Blackberry or
8 computer; the Internet, any Internet service, or any text or
9 instant messaging service; or any Internet chat room, blog, or
05:12 10 website such as Facebook, My Space, LinkedIn, You Tube or
11 Twitter, to communicate to anyone any information about this
12 case or to conduct any research about this case until I accept
13 your verdict.

14 Let me add a couple of things that are not written
05:13 15 down. I mentioned earlier that two people will be released from
16 this case. That will occur momentarily. I also mentioned that
17 those who are released or may be released may be called back
18 into service. One or more of you may not be able to continue
19 with deliberations. It's happened before. People have gotten
05:13 20 sick. And just in case that occurs, those people who have been
21 released may be called back to deliberate with the others so
22 that this case can be concluded. Hence, if you are one of the
23 two people released, what I said about communication applies
24 even though you've been released unless you hear that this case
05:14 25 has gone to verdict. And we will get your contact information

1 to advise you whether or not the case has gone to verdict so
2 that you will no longer have to stand by and remain ready to
3 return to court.

4 So do not let the fact that you will be walking out
05:14 5 shortly cause you to breathe in such a way as you will spill
6 over into somebody's ear or iPhone or whatever you have seen or
7 heard in this courtroom during your jury service.

8 With that said, upon retiring to the jury room select
9 one of your number as your foreperson who will preside over your
05:15 10 deliberations. In determining who will serve as your foreperson
11 you should consider the ability of that person to conduct your
12 deliberations in a fair manner with due regard for the right of
13 each jury member to be heard.

14 A verdict form has been prepared for you. It reads:
05:15 15 United States of America, Plaintiff, vs. James A.
16 Stuart, Jr., Case No. 10-CR-288. Verdict.

17 With respect to the offense charged in count one, tax
18 evasion, we, the jury, duly impaneled and sworn in the
19 above-entitled action, find the defendant, James A. Stuart, Jr.,
05:15 20 there's a space for your decision, guilty or not guilty. The
21 same language is set out with regard to each of the counts.

22 You should take the verdict and when you have reached
23 a unanimous agreement on the verdict your foreperson will date
24 and sign the form to state the verdict upon which you agree.

05:16 25 The verdict must represent the considered judgment of

1 each juror. In order to return a verdict it is necessary that
2 each juror agree thereto. Your verdict must be unanimous. It
3 is your duty as jurors to consult with one another and to
4 deliberate with a view to reaching an agreement if you can do so
05:16 5 without violence to individual judgment. Each of you must
6 decide the case for yourself, but do so only after an impartial
7 consideration of the evidence with your fellow jurors. While
8 consulting with fellow jurors, keep in mind that any notes that
9 were taken during the course of the trial are entitled to no
05:16 10 greater weight than the memory or impression of each juror as to
11 what the testimony may have been.

12 Also, in the course of your deliberations do not
13 hesitate to re-examine your own views and change your opinion if
14 convinced it is erroneous. But, do not surrender your honest
05:17 15 conviction as to the weight or effect of evidence solely because
16 of the opinion of your fellow jurors or for the mere purpose of
17 returning a verdict.

18 You are not partisans, you are judges of the facts.
19 Your sole interest is to ascertain the truth from the evidence
05:17 20 in the case.

21 If you need to communicate with me after you retire to
22 the jury room, the only proper way is in writing, signed by the
23 foreperson, or if your foreperson is unwilling to do so, by some
24 other juror and given to the bailiff.

05:18 25 You will note from the oath about to be taken by the

1 bailiff that he, as well as other persons, is forbidden to
2 communicate in any way or manner with any member of the jury on
3 any subject touching on the merits of the case.

4 Bear in mind also that you are never to reveal to any
05:18 5 person how the jury stands numerically or otherwise until after
6 you have reached a unanimous verdict.

7 Let me add, and I mentioned this Monday, if any person
8 is away from the table you may not deliberate. So if people
9 have to go out for a smoke break, anyone's in the restroom, you
05:19 10 cannot deliberate. Everybody should participate in all
11 discussions.

12 There's also a bell on the wall. It's a little green
13 button near the water cooler. If you push it, it sounds like
14 the Avon commercial in the back. So if we hear Avon calling we
05:19 15 will know that you either have a verdict or there's an issue you
16 would like us to address and we will respond as promptly as we
17 can. Now, it may very well be that the parties will not be in
18 the courtroom when you ring the bell, and if that is so we will
19 have to wait until everyone gets here to discuss any issues that
05:19 20 you raise.

21 You will have the instructions with you in the jury
22 room. We will also provide you with documents that have been
23 received in evidence and those will be sent in shortly. We
24 cannot ordinarily read back testimony. That is something that's
05:20 25 problematic. We do not have a transcript of this trial prepared

1 at this point. So you should keep that in mind as well. It's
2 our duty to try to provide you with all the tools you need to do
3 your work. And with the instructions and the evidence and the
4 arguments, you have tools at your disposal. You will also have
05:20 5 food available in due course if you need it.

6 I think that covers the waterfront. Can you swear in
7 the -- oh, before we do that we have to release our other
8 jurors.

9 Do the parties wish to come forward, please?

05:21 10 Mr. Stuart?

11 (At side bar on the record.)

12 THE COURT: As an initial matter I'd like to ask the
13 parties whether you are satisfied with the instructions which
14 have been given to the jury.

05:21 15 MR. BERNHOFT: Yes, Judge.

16 MR. JACOBS: Yes, I am, Judge.

17 THE COURT: All right. Are there any other issues
18 that we need to address at this point in time?

19 MR. BERNHOFT: Not from the defense perspective, Your
05:21 20 Honor.

21 MR. JACOBS: Nothing from the government, Judge.

22 THE COURT: All right. We have here the numbers of
23 each of the jurors. Do you want to select?

24 THE DEFENDANT: One?

05:22 25 THE COURT: Two. It's up to you.

1 (Defendant selects alternate jurors.)

2 THE COURT: Number 4 and number 16. Show them who
3 those people are.

4 All right, we will have the bailiff release 4 and 16
05:22 5 and then we will swear the bailiff.

6 There are no motions at this time; is that correct?

7 MR. BERNHOFT: Yes, no motions for the defense.

8 MR. JACOBS: Nothing from the government, Judge.

9 THE COURT: Very well.

05:24 10 (End of discussion at side bar.)

11 THE COURT: I have been in communication with our
12 landlord, GSA, and the heat is still on, so it should be fairly
13 comfortable in the jury room. We have an air cleaner in there
14 as well, but it's very noisy. But if things become
05:24 15 uncomfortable again, Avon.

16 We'll be with you in just a moment. The clerk has to
17 get some paperwork for the jurors who are being released.

18 Please note the bailiff has just advised that the
19 front door will be alarmed in four minutes, which means you have
05:25 20 to leave by going to the left and out the Jackson Street or east
21 door where security is posted.

22 THE BAILIFF: All rise, please.

23 THE CLERK: Jurors number 4 and 16. Your original
24 number.

05:26 25 THE COURT: Thank you very much for your jury service.

1 (Alternates discharged.)

2 THE COURT: Be seated for a moment, please.

3 About this time I suspect Mr. Hill will be enjoying
4 his jury service. Our bailiff was called to jury duty in state
05:26 5 court.

6 (Brief pause.)

7 THE CLERK: Please raise your right hand.

8 (Bailiff sworn.)

9 THE COURT: Please rise.

05:29 10 (Jury out for deliberations at 5:29 p.m.)

11 THE COURT: Be seated, please.

12 Before leaving the courtroom I do ask the attorneys or
13 paralegals or associates to just recheck the exhibits that are
14 being sent to the jury room so that you are satisfied that only
05:30 15 the exhibits which have been received and properly redacted are
16 being made available for the use of the jury. If any issue
17 arises I will return to the courtroom and we will resolve the
18 issue.

19 Next, please give to the clerk contact information so
05:31 20 that you can be called if the jury has a question or a verdict
21 has been reached. I would certainly suggest that you be as
22 close as possible so that there's not any inordinate delay in
23 the proceedings if something should occur.

24 I envision that the jury will be here no later than
05:31 25 9:00 o'clock tonight because that's when the heat goes off. All

1 right? They will be asked to return tomorrow at 8 -- well, I'll
2 make it 9:00 o'clock if they have to continue with
3 deliberations. And we will contact you with the view that you
4 will be here within say 30 minutes of any verdict if one is
05:32 5 reached tomorrow. All right? Is that fair and reasonable under
6 the circumstance?

7 MR. BERNHOFT: Yes, Judge.

8 MR. JACOBS: Fine with me, Judge.

9 THE COURT: All right. We'll take a break and I'll
05:32 10 hopefully hear nothing from you.

11 (Trial adjourned for deliberations at 5:32 p.m., until
12 7:56 p.m.)

13 MR. RESLER: Judge, could I just mention something for
14 the record? I told Mr. Bernhoft this. I'm gonna give your
07:56 15 clerk a ride home tonight. She happens to be a neighbor of
16 mine, and obviously I don't want her husband to have to come
17 down to get her. I told Mr. Bernhoft that. Just so you're
18 aware.

19 THE COURT: She is a professional and she would not
07:57 20 discuss any case because she has been on my staff for what,
21 about 14 -- 13, 14 years?

22 THE CLERK: Yes.

23 THE COURT: And she expects to be here beyond this
24 case.

07:57 25 THE BAILIFF: All rise.

1 (Jury in at 7:58 p.m.)

2 THE COURT: Be seated, please. Have you reached a
3 verdict?

4 THE FOREPERSON: Yes, Your Honor.

07:58 5 THE COURT: Would you please hand it up?

6 (Verdict tendered to the court.)

7 THE COURT: Would the clerk publish the verdict.

8 VERDICT

9 THE CLERK: Verdict in United States District Court
07:58 10 Eastern District of Wisconsin, Case No. 10-CR-288, United States
11 of America vs. James A. Stuart, Jr.

12 With respect to the offense charged in count one, tax
13 evasion, we, the jury, duly impaneled and sworn in the
14 above-entitled action, find the defendant, James A. Stuart, Jr.,
07:59 15 guilty.

16 With respect to the offense charged in count two, tax
17 evasion, we, the jury, duly impaneled and sworn in the
18 above-entitled action, find the defendant, James A. Stuart, Jr.,
19 guilty.

07:59 20 With respect to the offense charged in count three,
21 tax evasion, we, the jury, duly impaneled and sworn in the
22 above-entitled action, find the defendant, James A. Stuart, Jr.,
23 guilty.

24 Dated at Milwaukee, Wisconsin, this 7th day of
07:59 25 December, 2011, signed by the foreperson.

1 THE COURT: Starting with the foreperson and moving to
2 the right and then across the back of the jury box to the left,
3 was this and is this now your verdict as to each of the counts?

4 A JUROR: Yes, Your Honor.

08:00 5 THE COURT: Next?

6 A JUROR: Yes, Your Honor.

7 A JUROR: Yes.

8 A JUROR: Yes, Your Honor.

9 A JUROR: Yes, Your Honor.

08:00 10 A JUROR: Yes, Your Honor.

11 A JUROR: Yes.

12 A JUROR: Yes.

13 A JUROR: Yes, Your Honor.

14 A JUROR: Yes, Your Honor.

08:00 15 A JUROR: Yes.

16 A JUROR: Yes, Your Honor.

17 THE COURT: Thank you all. You may return to the jury
18 room at this time. We thank you for your attentiveness and also
19 for the fact that you gave up parts of your lives for the
08:00 20 purposes of justice in our community. It is imperative that
21 citizens serve as jurors, and oftentimes they really don't want
22 to do so, but it is part of our system of government, an
23 important part of our system of government and justice, and we
24 appreciate what you've done.

08:00 25 You may return to the jury room for further

1 instructions.

2 THE BAILIFF: All rise.

3 (Jury discharged at 8:00 p.m.)

4 THE COURT: Be seated, please.

08:01 5 Does either side wish to be heard?

6 MR. JACOBS: I have nothing, Your Honor.

7 MR. BERNHOFT: I have nothing, Your Honor.

8 THE COURT: Very well. The clerk will docket the
9 verdict in this matter and provide dates and times for further
08:01 10 proceedings and submissions.

11 THE CLERK: The presentence report shall be disclosed
12 by February 29th.

13 Any objections should be submitted to Pretrial
14 Services by March 21st.

08:01 15 And any motions and sentencing memoranda shall be
16 filed by April 11th.

17 And a sentence date of April 26th at 2:00 o'clock.

18 THE COURT: Is that satisfactory?

19 MR. JACOBS: That's fine with me, Your Honor.

08:02 20 MR. BERNHOFT: Yes, Your Honor.

21 THE COURT: The court does remind Mr. Stuart that the
22 conditions of release that were set initially will remain in
23 effect. Therefore, it is imperative that you not travel except
24 as may be approved by Pretrial Services. It will be necessary
08:02 25 for you to report to Pretrial Services as directed and to assist

1 in the preparation of the presentence report.

2 Let me inquire also -- let's see.

3 The clerk set a date of April 26 -- no, disclosure --
4 no, that's fine. We're fine with Rule 32. We are meeting the
08:03 5 requirements of Rule 32 so we don't need to get any waivers.

6 Is there anything else at this time?

7 MR. JACOBS: Not for the government, Judge.

8 MR. BERNHOFT: Not for the defense, Your Honor.

9 THE COURT: All right. Let me just verify whether or
08:03 10 not there are any motions that need to be addressed.

11 MR. BERNHOFT: None for the defense, Your Honor.

12 MR. JACOBS: Nothing for the government, Your Honor.

13 THE COURT: Very well. We'll proceed accordingly.

14 Have a good evening. You are to leave by the usual door, the
08:03 15 one you just entered. All right.

16 (Jury trial concluded at 8:03 p.m.)

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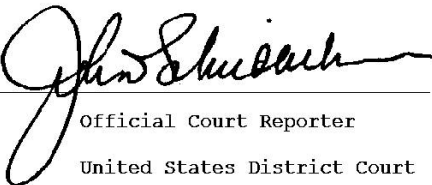
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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WISCONSIN
3

4 I, JOHN T. SCHINDHELM, RMR, CRR, Official Court
5 Reporter for the United States District Court, Eastern District
6 of Wisconsin, do hereby certify that I reported the foregoing
7 proceedings, and that the same is true and correct in accordance
8 with my original machine shorthand notes taken at said time and
9 place.

10 Dated this 6th day of March, 2012,
11 Milwaukee, Wisconsin.

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14 Official Court Reporter
United States District Court

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I N D E X

INSTRUCTION CONFERENCE

Instructions Discussed..... 346

CONTINUED JURY INSTRUCTION CONFERENCE

Instructions Discussed..... 403

CLOSING ARGUMENT

By Mr. Jacobs..... 408

CONTINUED INSTRUCTION CONFERENCE

Instructions Discussed..... 447

CLOSING ARGUMENT

By Mr. Bernhoft..... 449

REBUTTAL ARGUMENT

By Mr. Jacobs..... 464

FINAL JURY INSTRUCTIONS

Read By the Court..... 468

VERDICT

Published By the Clerk..... 489

<u>WITNESS</u>	<u>EXAMINATION</u>	<u>PAGE</u>
MATTHEW RECH III, GOVERNMENT WITNESS		
	Cont'd Direct Examination By Mr. Jacobs.....	348
	Trial Stipulation No. 13	
	Read into the record and admitted.....	351
	Trial Stipulation No. 9	
	Read and admitted.....	354
	Trial Stipulation No. 10	
	Read and admitted.....	355
	Trial Stipulation No. 11	
	Read and admitted.....	355
	Trial Stipulation No. 12	
	Read and admitted.....	360
	Trial Stipulation No. 17	
	Read and admitted.....	361
	Trial Stipulation No. 16	
	Read and admitted.....	367
	Trial Stipulation No. 18	
	Read and admitted.....	368
	Cross-Examination By Mr. Bernhoft.....	370
KATHLEEN BASHAW, GOVERNMENT WITNESS		
	Direct Examination By Mr. Jacobs.....	382
	Cross-Examination By Mr. Bernhoft.....	397

1	E X H I B I T S		
2	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>OFFERED/ADMITTED</u>
3	92	2003 Wisconsin 1 James/Marjorie Stuart Income Tax	355
4		Return	
5	93	2004 Wisconsin 1 James/Marjorie Stuart Income Tax	355
6		Return	
7	94	2005 Wisconsin 1 James/Marjorie Stuart Income Tax	355
8		Return	
9	95	7/10/2006 Notice of Amount Due to J Stuart on 2005	355
10		taxes	
11	96	7/10/2006 DOR Notice of Amt Due.....	355
12	97	7/13/2006 Stuart letter appealing DOR Notice of Amt ...	355
13		Due	
14	98	10/30/2006 DOR Notice of Action on Petition for	355
15		Redetermination	
16	99	12/11/2006 Stuart motion for Determination of Status...	357
17	100	2/9/2007 Stuart submission to Tax Appeals Commission...	357
18	101	2/27/2007 DOR Answer to Amended Petition for	357
19		Redetermination	
20	102	DOR Notice of Motion and Motion for Summary Judgment ..	357
21		w/attachments	
22	103	3/5/2007 DOR Brief.....	357
23	104	3/13/2007 Tax Appeals Commission Briefing Order.....	357
24	105	3/20/2007 Stuart response w/attachments.....	357
25	106	4/2/2007 DOR Reply Brief.....	357

1	107	4/26/2007 Stuart Reply to DOR.....	357
2	108	6/7/2007 Wis Tax Commission Ruling and Order.....	357
3	147	Certificate of Lack of Record: Stuart, 2006-2010.....	365
4	148	Certification of Lack of Record, New Age Chemical.....	365
5	149	IRS Certificates indicating no record of return	366
6		filed for New Age Chemical, Ltd: 2007-2010	
7	174	Jim Stuart letter published in 12/21/2006 edition of ..	361
8		Lake County Reporter	
9	175	James A Stuart Jr DL Renewal App 9/6/2006.....	352
10	179	Certified copy of passport application for J Stuart....	368
11	180	Certification of Absence of Public Record:	368
12		Certificate of Loss of Nationality For J Stuart	
13	206	2006 Waukesha Cty Real Property Tax Bill Details.....	369
14	207	2005 Waukesha Cty Real Property Tax Bill Details.....	369
15	208	2004 Waukesha Cty Real Property Tax Bill Details.....	369
16	210	Bashaw Analysis.....	385
17			
18			
19			
20			
21			
22			
23			
24			
25			